

THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH
CENTRAL DIVISION

PURPLE INNOVATIONS, a)
Delaware limited liability)
company,)
Plaintiff,)
vs.) Case No. 2:17-CV-138DB
HONEST REVIEWS, a Florida)
corporation, et al.,)
Defendants.)
_____)

BEFORE THE HONORABLE DEE BENSON

September 16, 2017

Motion Hearing

REDACTED TRANSCRIPT

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I N D E X

Witness -----	Examination By -----	Page -----
Ryan Monahan	Mr. Magleby (Cross)	9
Ryan Monahan	Mr. Sperlein (Redirect)	87
Ryan Monahan	Mr. Horwitz (Redirect)	108
Ryan Monahan	Mr. Magleby (Recross)	112
Ryan Monahan	Mr. Horwitz (Further Redirect)	116
Marc Werner	Mr. Magleby (Cross)	118
Marc Werner	Mr. Horwitz (Redirect)	157
Marc Werner	Mr. Magleby (Recross)	191
Calisha Anderson	Mr. Horwitz (Cross)	198
Calisha Anderson	Mr. Magleby (Redirect)	248
Calisha Anderson	Mr. Horwitz (Recross)	261

Exhibit -----	Received -----
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(No exhibits received.)

1 September 16, 2017

9:00 a.m.

2 P R O C E E D I N G S

3
4 THE COURT: Good morning.

5 We'll go ahead in Purple Innovations, L.L.C.,
6 versus Honest Reviews, L.L.C., and others. The case number
7 is 17-CV-138.

8 Let me make sure that we have everybody who is
9 here appearing for a party on the record. Could I ask to
10 begin on this side over here. Mr. Magleby, if you will
11 start off. I think I know everyone, but I might miss a name
12 or two.

13 MR. MAGLEBY: Yes, Your Honor. I had actually to
14 write it down to make sure I didn't miss anyone. Jim
15 Magleby, Christine Greenwood and Adam Alba from my law firm
16 on behalf of the plaintiff Purple Innovation, L.L.C. Also
17 here with us is Casey McGarvey and Craig Climant, who are
18 in-house counsel with Purple. Also here with us are
19 attorneys Jordan Cameron, Neil Kaplan and Anneli Smith, who
20 are counsel for Purple in one capacity or another.

21 My paralegal, Greg Waymant, will be around as
22 well.

23 THE COURT: Did you say Ms. Smith?

24 MR. MAGLEBY: Yes.

25 THE COURT: She is behind. I see her and I see

1 Mr. Kaplan back there.

2 That is quite a team. That is all on the Purple
3 side. Thank you.

4 Over here, please.

5 MR. SPERLEIN: Good morning, Your Honor. Gill
6 Sperlein representing the defendants Ryan Monahan and Honest
7 Reviews.

8 THE COURT: Thank you.

9 MR. HORWITZ: Good morning, Your Honor. Ethan
10 Horwitz, and I am here with Eleanor Yost and Karmen Schmid,
11 and in the audience is Mr. Werner.

12 THE COURT: Right. Which one is Mr. Werner?

13 Thank you.

14 It is Mr. Horwitz, Ms. Yost and Ms. Schmid?

15 MR. HORWITZ: Correct, Your Honor.

16 MR. SPERLEIN: Your Honor, I'm sorry. I did fail
17 to mention that Mr. Monahan is also in the gallery.

18 THE COURT: Okay. Thank you.

19 As I indicated in the order I put out earlier this
20 week, and I listed the order of the appearance of the
21 witnesses, and we're going to take their declarations, which
22 I have in front of me as their direct examination, and then
23 we'll go from there. The main issue and the only issue that
24 I plan on entertaining here today is the issue of the
25 relationship, whatever it is or isn't, between Mr. Monahan

1 and GhostBed. That is what it boils down to. In light of
2 the declaration of Calisha Anderson that was submitted some
3 weeks ago, the Court expressed then and still expresses its
4 desire to try and learn the facts about what that
5 relationship is.

6 It has been represented to this Court through
7 declarations and through argument of counsel that
8 Mr. Monahan is operating as an independent journalist,
9 completely independent from GhostBed or any other mattress
10 company. Ms. Anderson's declaration put that question
11 somewhat at issue, and I would just like to hear what these
12 witnesses who have submitted declarations under penalty of
13 perjury to this Court have to say about that relationship.

14 I received yesterday a reply that is styled
15 GhostBed, Inc.'s reply in support of its offer of proof. It
16 was submitted by Mr. Horwitz and Ms. Yost and Ms. Schmid.
17 It asks the Court to consider what they style an offer of
18 proof. I have read that and the declaration of John
19 Godleski. I have not examined it in careful detail, but I
20 read it this morning. I didn't see it until this morning.
21 I will receive it as I have in the past, but that is not the
22 focus of today's hearing. It just isn't.

23 They say in this declaration, or Dr. Godleski
24 seems to think that the public has a need to know or a right
25 to know about the composition of this powder. GhostBed has

1 always been free to educate the public on that issue if they
2 feel they can do so properly. Competitors can certainly
3 inform the public about what they think is going on with
4 their competition.

5 The issue in this case is whether this Court has
6 been appropriately informed about whether there is a
7 relationship between Mr. Monahan and GhostBed that has not
8 been disclosed, so that the public in that regard is being
9 told that a person is an independent, completely objective
10 reviewer of mattresses when he may have some relationship to
11 one of the competitors in the industry. That is it.

12 So with that, Mr. Magleby, are you ready to go? I
13 have forgotten the order. Don't we have Mr. Monahan first?

14 MR. MAGLEBY: Yes.

15 THE COURT: Yes, sir.

16 MR. HORWITZ: Your Honor, before we start two
17 issues of order. First, we would ask for the sequestration
18 of witnesses.

19 THE COURT: All right. That motion is granted.

20 MR. HORWITZ: The second is looking at the huge
21 amount of material that Mr. Magleby has to go through, I
22 want to make sure that, from a timing point of view, that
23 we're not going to be stuck at the end with five minutes to
24 cross-examine Ms. Anderson. So is there some time limits
25 Your Honor wishes to impose?

1 THE COURT: There is one timekeeper, me, and I'm
2 going to keep this thing moving as best I can. I don't know
3 how much he has to go through. I know he has boxes, but I
4 don't know the subject matter, and I hesitate to say this
5 because I know lawyers, but I don't see how it can go on a
6 long time. We know what has been said in the declarations.
7 I will allow the Rules of Evidence to be applied for
8 purposes of impeachment and prior inconsistent statements
9 and so on, but I am going to try to keep a pretty tight lid
10 on this thing so that we are not here all day.

11 I appreciate everyone coming on a Saturday. I
12 know it was done in large part, if not in sole, to
13 accommodate Ms. Anderson and her circumstances, so we have
14 got to get to her. Every effort will be made to not give
15 unequal time to one witness and that witness's examination
16 over another.

17 MR. HORWITZ: Thank you, Your Honor.

18 THE COURT: With that, let's get started.

19 I will ask Mr. Werner -- Mr. Monahan is going to
20 be on the stand.

21 Sir, come on up and we'll have you sworn in as a
22 witness.

23 Mr. Werner and Ms. Anderson I'm going to ask to be
24 out in the hallway until their turn to testify.

25 Yes, sir.

1 MR. HORWITZ: Your Honor, Mr. Werner is the
2 representative of a party. Can he stay?

3 THE COURT: Under these circumstances, I am going
4 to invoke Rule 615 to ask these three witnesses not to hear
5 the testimony of the other witnesses.

6 MR. HORWITZ: Thank you.

7 THE COURT: Okay.

8 RYAN MONAHAN

9 Having been duly sworn, was examined

10 and testified as follows:

11 THE WITNESS: My name is Ryan Monahan, R-y-a-n,
12 M-o-n-a-h-a-n.

13 CROSS-EXAMINATION

14 BY MR. MAGLEBY

15 Q. Mr. Monahan, we met this morning very briefly. My name
16 is Jim Magleby. I represent Purple Innovations, L.L.C. in
17 this case and I'm going to be asking you some questions.

18 Just so I get it right, is it Monahan or Monahan?

19 A. It is Monahan.

20 Q. Okay. Mr. Monahan, you live in Florida?

21 A. Yes, sir.

22 Q. You are familiar with the entity or the business known
23 as GhostBed?

24 A. Yes, sir.

25 Q. You know where GhostBed's offices are?

1 A. Yes, sir.

2 Q. It is a close drive to your home, is it not?

3 A. It is roughly 40 minutes.

4 Q. It is about 23 miles; is that correct?

5 A. I am not sure of the exact mileage.

6 Q. You also have an office in Florida?

7 A. Yes, sir.

8 Q. That is also a short drive to GhostBed?

9 A. It is roughly the same distance.

10 Q. Does 24 miles sound about right?

11 A. I'm not sure of the exact mileage.

12 Q. You're familiar with the website with the domain name

13 honestmattressreviews.com, correct?

14 A. Yes, sir.

15 Q. I'm going to call that the H.M.R. website for short.

16 Do you or your company, Honest Reviews, L.L.C., own and
17 operate that website?

18 A. Yes.

19 Q. Did you incorporate Honest Reviews, L.L.C. in October
20 of 2016?

21 A. I incorporated around that time. I'm not sure exactly
22 when.

23 Q. Let me have you look on the screen in front of you and
24 I'm going to put up Exhibit 6.

25 I ask you if you recognize Exhibit 6?

1 A. Yes, sir.

2 Q. Are those the articles of organization for Honest
3 Reviews, L.L.C.?

4 A. Yes, sir.

5 Q. Can you tell the Court what date these were filed?
6 Look at the top right-hand corner.

7 A. February 27th, 2017.

8 Q. I'm sorry, sir. Maybe I misled you. Let me try this.
9 I am running the risk of embarrassing myself with the
10 technology.

11 A. Understood.

12 Q. Can you see the file date there?

13 A. Yes, sir.

14 Q. October 10, 2016, correct?

15 A. Yes, sir.

16 Q. Do you know when Calisha Anderson was hired by
17 GhostBed?

18 A. I believe around September-ish.

19 Q. Would it surprise you if she was hired October 11,
20 2016, literally the day after you incorporated Honest
21 Reviews?

22 A. It would be a complete coincidence.

23 Q. All right. When you registered the
24 honestmattressreviews.com website you did it secretly,
25 didn't you?

1 A. I enabled privacy on the domain, yes.

2 Q. Let's take a look at Exhibit 7.

3 You're familiar with WhoIs, the website WhoIs and the
4 services it provides?

5 A. Yes.

6 Q. It provides domain information for different websites;
7 is that correct?

8 A. Yes.

9 Q. If we look at this domain registration -- sorry. I did
10 this wrong. What domain does this document relate to?

11 A. Honestmattressreviews.com.

12 Q. If we go down here under registrant contact, it is
13 Domains by Proxy, L.L.C.; is that correct?

14 A. Correct.

15 Q. This is one way that somebody can keep the name of the
16 actual owner out of the public record, correct?

17 A. That is one way, yes.

18 Q. Was this done to hide your connection with GhostBed?

19 A. No, sir.

20 Q. Now, it takes time and costs money to build a website,
21 does it not?

22 A. It takes time, yes.

23 Q. Does the H.M.R. website share any features that are the
24 same as the GhostBed website?

25 A. They are both built on the word press concept

1 management system.

2 Q. How do you happen to know that?

3 A. Through consulting for Achieve we worked on the blog
4 for GhostBed, and that is the platform that Honest Mattress
5 Reviews is on.

6 Q. Did you have anything to do with the development of the
7 GhostBed website while you were consulting through Achieve?

8 A. I submitted design recommendations.

9 Q. Does the H.M.R. website and the GhostBed website have
10 the same hosting company?

11 A. Yes.

12 Q. Did they use the same designer?

13 A. I don't know who they used for their design, but they
14 have in-house and I designed Honest Mattress Reviews myself.

15 Q. Are a number of the plug-ins the same?

16 A. A number of the plug-ins are the most commonly used
17 plugins, yes.

18 Q. Who pays the hosting fees for
19 honestmattressreviews.com?

20 A. Social Media Sharks.

21 Q. Did any money for the launch of the H.M.R. website come
22 from either GhostBed, Nature's Sleep, Marc or Ashley Werner
23 or any company affiliated with them?

24 A. No, sir.

25 Q. I'm going to call those persons the Werner parties for

1 simplicity, so I don't have to repeat that as we go through
2 this today. If you are ever confused by my question, please
3 let me know.

4 A. Yes, sir.

5 Q. Now, you claim that the H.M.R. website is a
6 journalistic exercise; is that correct?

7 A. 100 percent.

8 Q. The mattress review site, though, is also an economic
9 enterprise, isn't it?

10 A. It depends how it is structured for monetization.

11 Q. Honest Reviews, L.L.C. is not a charitable 501C3
12 organization, is it?

13 A. No, sir.

14 Q. It is a for profit entity, isn't it?

15 A. It is registered that way, yes.

16 Q. Was your college degree in journalism?

17 A. I didn't attend college.

18 Q. So the answer to my question is, no, you do not have a
19 degree in journalism?

20 A. I do not have a college degree in journalism, no.

21 Q. Have you ever been a reporter for a newspaper?

22 A. Not for a traditional newspaper, no.

23 Q. You know that journalists take classes in journalism
24 ethics. Have you ever taken such a class?

25 A. No, sir.

1 Q. Does Honest Reviews, L.L.C. have any employees?

2 A. No, sir.

3 Q. You're the only one who provide services?

4 A. Yes, sir.

5 Q. Is work on the H.M.R. website a full-time job?

6 A. I focus roughly three hours a day on it.

7 Q. Three hours a day. How much time was it when you
8 launched it?

9 A. Roughly the same amount of time.

10 Q. It took you about three hours a day to get it up?

11 A. Yes, sir.

12 Q. From when to when? How long did it take from when you
13 started working on the site to when you got it up?

14 A. I started roughly in August and got to what I would
15 call public ready by October.

16 Q. So about 90 hours a month is what you spend on that
17 site?

18 A. Three hours a day, whatever that equates out to.

19 Q. 30 days in a month, three hours a day, roughly 90?

20 A. Yes, sir.

21 Q. Are you able to work remotely and manage the H.M.R.
22 website?

23 A. Yes, sir.

24 Q. You have a laptop you travel with?

25 A. Yes, sir.

1 Q. You can do H.M.R. related work 24/7 from anywhere and
2 everywhere?

3 A. As long as there is internet connectivity.

4 Q. Let me ask you this. This three hours a day related to
5 the H.M.R. website, does that include also hosting or
6 commenting on social media such as Facebook or Twitter in
7 relation to the H.M.R. website?

8 A. I would say yes.

9 Q. All right. So when you're able to work from remote
10 locations you, in fact, were able to work last Saturday
11 during the hurricane and make this post that is on Exhibit
12 237; is that correct?

13 A. Yes, sir.

14 Q. All right. We can see here, just to orient ourselves,
15 it is September 7th, 7:40 p.m., so sometimes you work after
16 traditional business hours?

17 A. The internet is 24/7 and people read my content 24/7,
18 so there are no traditional business hours.

19 Q. Excellent. And you post here if you have had a health
20 issue due to a Purple mattress or pillow you can fill out a
21 short report online with the Consumer Products Safety
22 Commission in minutes and report your unsafe product, then
23 others will know.

24 Did you make that post on September 9th?

25 A. Yes, sir.

1 Q. When did you first meet Marc Werner?

2 A. I met Marc Werner December of 2015.

3 Q. In what capacity?

4 A. Social Media Sharks does subcontracting for Big Couch
5 Media, which is now Achieve, so just for simplicity I will
6 just call it Achieve the whole time if that is okay.

7 Q. That is great. I was going to make the same
8 suggestion.

9 A. Okay. I started working with Achieve in September of
10 2015. We were presented the project in November of 2015 and
11 we first met in December of 2015.

12 Q. At that time Mr. Werner was associated with a company
13 known as Nature's Sleep, which is a traditional mattress
14 company?

15 A. Yes, sir.

16 Q. Does Mr. Werner also have a company called Werner Media
17 Partners?

18 A. I believe so.

19 Q. Do you know which one of those two entities Achieve
20 contracts with?

21 A. I do not know.

22 Q. And then GhostBed is a d/b/a of Nature's Sleep; is that
23 right?

24 A. I believe so. I am not sure of their structure.

25 Q. Understood.

1 After you had been doing work for, I will just say
2 Nature's Sleep or Mr. Werner or his companies, did Mr.
3 Werner decide to start what is called a bed in a box
4 company?

5 A. That was already in existence before we started.

6 Q. Tell the Court just quickly, what is bed in a box?

7 A. Bed in a box is basically the evolution of logistics.
8 A mattress is still a mattress, and a bed in a box is a
9 sector in which basically technology has allowed them to
10 vacuum seal it and deliver it via a traditional method like
11 FedEx or U.P.S.

12 Q. It was a disruptive entrant into the mattress market,
13 this new line of product, correct?

14 A. I wouldn't say it is a new line of product. I would
15 say it is just an evolution in logistics.

16 Q. All right. The company or the d/b/a through which
17 GhostBeds are sold is called GhostBed, right?

18 A. Again, I am not sure how they are structured.

19 Q. You have been around since the early days of GhostBed.
20 Is that fair?

21 A. Yes, sir. I first found out about the project and met
22 them in December of 2015.

23 Q. 2015. All right. I am going to ask you to take a look
24 at Exhibit 199. I will just ask you a couple of questions
25 about this, although it may predate your role.

1 Exhibit 199, the title of it is strategic marketing and
2 consulting and digital marketing management proposal,
3 August 31, 2015. Up at the top it says Big Couch Media.
4 Just for clarity, Big Couch Media became Achieve; is that
5 correct?

6 A. Yes, sir.

7 Q. And then Nature's Sleep, that is the Marc Werner
8 company we have been talking about, right?

9 A. Yes, sir.

10 Q. Are you aware of initial marketing plans for GhostBed
11 involving attacking competitors with health claims?

12 A. No, sir.

13 Q. Did the initial marketing plan for GhostBed involve
14 trying to influence mattress reviewers?

15 A. I am not aware of that.

16 Q. Let's go to the second page of this document. Let me
17 ask you a couple questions about the top here.

18 Last year, April of 2014, a new type of competitor
19 entered the market totally disrupting the category.

20 Do you agree with that statement?

21 A. I agree that -- I wouldn't say necessarily a
22 competitor. I would definitely say bed in a box became more
23 mainstream around that time.

24 Q. This document identifies this competitor as Casper.

25 Are you familiar with Casper?

1 A. I am.

2 Q. Are they the market leader in the bed in a box segment?

3 A. They were the most well-known brand. I don't know as
4 far as volume of units or anything.

5 Q. Further on here it says Casper has done a great job
6 with its marketing and P.R.

7 Do you agree with that?

8 A. Absolutely.

9 Q. And then down here these companies are using some
10 unconventional marketing and P.R. initiatives as well as
11 harnessing the power of social media channels, organic and
12 paid.

13 Do you agree with that?

14 A. I would agree with they definitely leveraged digital
15 marketing, yes.

16 Q. So digital marketing is pretty important for this
17 segment?

18 A. It is important I think for all business today.

19 Q. Is it particularly important for the bed in a box
20 industry?

21 A. I think it is equally important for retail as bed in a
22 box.

23 Q. All right. Let's briefly look at this. It says here
24 Nature Sleep's new D-2-C product line GhostBed -- does D-2-C
25 stand for direct to consumer?

1 A. Yes, sir.

2 Q. All right. Here we go, to get its share of this fast
3 growing market Nature's Sleep has created its new D-2-C
4 brand GhostBed development site, www.ghostbed.com.

5 Do you believe that to be correct?

6 A. Yes.

7 Q. Let's go down to the bottom to the goals that are
8 expressed in this marketing material. P.R. goals.

9 What does P.R. stand for as far as you know?

10 A. Public relations and outreach.

11 Q. Competitors are in the media daily. Business pubs and
12 mainstream pubs, this space is vibrant and news making. We
13 are not getting coverage. Marc is highly frustrated.

14 Do you understand that to refer to Marc Werner?

15 A. I understand that statement to refer to Marc Werner.

16 Q. Then there is a primary goal. Mainstream media
17 coverage, digital and traditional broadcast and print.
18 Mainstream media coverage. Does that mean news coverage?

19 A. I am not sure what they meant by that. This is the
20 first time I have seen this document.

21 Q. Understood.

22 Let me ask you a couple of questions about this next
23 page. 199.4. There is a line here and it says how do we
24 maximize bloggers and influencer reviews?

25 Do you see that?

1 A. I do.

2 Q. Reviews. Are there such things as mattress review
3 websites?

4 A. Yes.

5 Q. And there are a number of them?

6 A. Yes, sir.

7 Q. And they purport to evaluate and make recommendations
8 of certain mattresses?

9 A. Yes.

10 Q. Including the bed in a box segment?

11 A. They include all mattresses regardless of how they are
12 sold.

13 Q. When you have been working with GhostBed, has there
14 been discussion about maximizing bloggers and influencing
15 review sites?

16 A. I have minimal involvement with anything as far as for
17 review sites.

18 Q. Then it says health claims. Have you been privy to any
19 discussion about a strategy by which GhostBed will make
20 health claims against its competitors?

21 A. Not against their competitors. The only knowledge I
22 have of health claims would be relative to the benefits of
23 sleeping on this mattress.

24 Q. Understood. But it is true, is it not, that Honest
25 Mattress Reviews is a mattress review site?

1 A. Yes, sir.

2 Q. And that you or H.M.R. have made health claims about
3 Purple's products?

4 A. No, sir. I ask questions about the product.

5 Q. It is true, sir, that you have asked health questions
6 about Purple's products?

7 A. Yes, sir. I just wanted to clarify that I did not make
8 any claims, I just asked questions about it.

9 Q. Let's go to the bottom of this document. There is a
10 marketing update, June of 2016.

11 Do you see that?

12 A. I do.

13 Q. By June of 2016 you were providing services to GhostBed
14 in relation to its products, correct?

15 A. June of 2016, yes, sir.

16 Q. All right. And under competition it says leaders that
17 we watch, Casper, Leesa, Purple, Tuft & Needle.

18 Is that correct?

19 A. Yes, sir.

20 Q. Was that accurate in June of 2016 that GhostBed thought
21 these were four important leaders to watch?

22 A. That must be what Georgianne felt. She must have put
23 this together.

24 Q. Do you agree with that?

25 A. I think there are many competitors. I think all of

1 these are top industry leaders, but I think there is more
2 than just this.

3 Q. Let's talk a bit about the payment structure from
4 GhostBed to you. I want to just put up a chart to make this
5 simple.

6 I want to start on the left and walk through this. On
7 the top left I have GhostBed, Marc Werner, and I guess maybe
8 I could put Nature's Sleep or Werner Media Partners over
9 there, but for now let's just call this GhostBed.

10 A. Uh-huh.

11 Q. Is it true that GhostBed makes payments to Achieve for
12 services that you provide?

13 A. GhostBed makes payments to Achieve for the contract and
14 services Achieve provides. I subcontract for Achieve.

15 Q. All right. But one way or another GhostBed is paying
16 for your services, correct?

17 A. GhostBed is paying for Achieve. Achieve subcontracts
18 me.

19 Q. Do your services benefit GhostBed?

20 A. Yes, sir.

21 Q. So part of the services that Achieve provides are your
22 services to GhostBed?

23 A. Yes, sir.

24 Q. All right. And then Achieve is here and this is also
25 formerly Big Couch Media, right?

1 A. Yes, sir.

2 Q. Achieve in turn pays Social Media Sharks?

3 A. Correct.

4 Q. And Social Media Sharks is your company?

5 A. Yes.

6 Q. How many employees does Social Media Sharks have?

7 A. I have two partners and I have two subcontractors.

8 Q. All right. Out of all of those, who provides the most
9 services to GhostBed, you or the others?

10 A. It is split 50/50 between me and William Bertolbe.

11 Q. Then the money from Achieve that goes to Social Media
12 Sharks, at least some of it comes back to you; is that
13 right?

14 A. Yes, sir.

15 Q. How much of the money that goes from Achieve to Social
16 Media Sharks for GhostBed work comes back to you?

17 A. Roughly 50 percent minus expenses.

18 Q. 50 person minus expenses?

19 A. Yes.

20 Q. But any way you look at it, the money originates with
21 GhostBed, right?

22 A. Yes.

23 Q. Is there any other relationship by which any money from
24 GhostBed or the Werner parties gets directly or indirectly
25 to Mr. Monahan?

1 A. No, sir.

2 Q. If GhostBed stopped paying Achieve, would Achieve stop
3 paying Social Media Sharks?

4 A. For this project? We work on many projects with
5 Achieve, so if the client, GhostBed, stops the relationship
6 with Achieve, payment would terminate for that project, but
7 would continue with the other projects.

8 Q. So if you made Marc Werner angry, for example, that
9 would put at least some of your personal income at risk?

10 A. I am not sure.

11 Q. Well, would Marc Werner have the authority to terminate
12 the services that you provide through Achieve?

13 A. Marc Werner could terminate the services through
14 Achieve, yes.

15 Q. And so if he decided that he didn't like you or was mad
16 at you, that might put your income at risk, right?

17 A. That could potentially, but equally the same if Achieve
18 replaced me with another subcontractor.

19 Q. Let me ask this. Has there been any discussion about
20 Achieve just being a middleman or a pass-through for the
21 monies that GhostBed pays that ultimately benefit you?

22 A. Not to my knowledge.

23 Q. Let me have you look at Exhibit 216. This is a
24 document titled Move Forward Thoughts. It was produced by
25 Achieve in this case. There is something called social

1 media P.P.C. Management.

2 Do you see where I am?

3 A. Yes, sir.

4 Q. All right. It says Social Media Sharks to provide
5 social media and P.P.C. Management.

6 Is P.P.C. pay per click?

7 A. Yes. That is relative to Google's advertising.

8 Q. It says fees for these services to be a pass-through
9 directly to GhostBed, however, billed monthly by Achieve.

10 Do you see that?

11 A. I see that, but this is the first time I'm seeing this
12 document.

13 Q. Setting aside whether you have seen this document or
14 not, have you ever been privy to any discussion about, hey,
15 we're just going to have the money paid to Achieve for Ryan
16 Monahan or Social Media Sharks be a pass-through?

17 A. The only knowledge I have is that Georgianne Brown, who
18 is the acting C.M.O., and she is also the C.M.O. for
19 Achieve, and she was going to take a lesser role in the
20 project, and so that is the only knowledge that I have. We
21 expressed that we would like to continue working with the
22 project.

23 Q. Does Achieve mark up your services and make money from
24 them?

25 A. Absolutely.

1 Q. Once you launched the H.M.R. website, did you have less
2 time to spend working on GhostBed and other projects?

3 A. No, sir.

4 Q. You had the same amount of time?

5 A. Yes, sir.

6 Q. Is it true, though, that you were paid more money by
7 GhostBed after you launched the H.M.R. website?

8 A. We were paid more money when Big Couch became Achieve.
9 Originally we were at -- I am not sure of the exact dollar
10 amount, but when Achieve took over the owner of Achieve,
11 Clay Williams, increased our amount at that point.

12 Q. I see. Okay. Let's look at 177. These are a series
13 of invoices. Just to orient ourselves, in the top left-hand
14 corner it says Social Media Sharks. Is this Social Media
15 Sharks' -- your company's form of invoice?

16 A. Yes, sir.

17 Q. And then it says bill to MaryLu George, Big Couch
18 Media. That is what is now Achieve, correct?

19 A. Correct.

20 Q. If we look here we can see the date kind of, but I
21 believe it is September of 2015.

22 Does that look right to you?

23 A. No. I believe it would have been November.

24 Q. I'm sorry. I misspoke. You're right. November.

25 This invoice actually does not have any money and it

1 does not look like there is actually a bill there; is that
2 right?

3 A. I am not sure why it looks like this.

4 Q. Let's flip down to the next one. Here we are in
5 January of 2016 and there is a \$1,200 amount; is that
6 correct?

7 A. Yes.

8 Q. Let's go to the next page. Here we are in February of
9 2016 and there are a number of billings on here, which I
10 think there is a total down here, \$6,387.

11 Is that correct?

12 A. Yes, sir.

13 Q. Let's go to the next page. It looks like maybe
14 starting in March of 2016 there is a flat amount of \$6,500;
15 is that correct?

16 A. Yes. This is the time we started doing pay per click
17 also.

18 Q. And so the amount went up, is that why?

19 A. Yes.

20 Q. But in October of 2016 at the time that you launched
21 the H.M.R. website, it actually goes up to about 9,600,
22 doesn't it?

23 A. Yes, sir.

24 Q. Let's take a look at 177.9.

25 Here we have an invoice for November and now the amount

1 has gone up to 9,300; is that correct?

2 A. Yes, sir.

3 Q. And it continues at that amount for some time, does it
4 not?

5 A. Yes, sir. This was around the time, just to note, that
6 Big Couch converted over to Achieve and that is when Clay
7 raised it to this amount.

8 Q. Okay. Your testimony under oath is it had nothing to
9 do with your launch of the H.M.R. website at about the same
10 time?

11 A. It had absolutely nothing to do with it.

12 Q. All right. Let's just flip forward. These payments
13 are consistent through the months, are they not?

14 A. Yes, sir.

15 Q. Up until you get to March of 2017 and then it goes up
16 to \$10,000 a month; is that correct?

17 A. That is correct.

18 Q. Do you know how much you have been paid in total by
19 GhostBed, at least as reflected by these invoices?

20 A. I don't know the total.

21 Q. We have prepared a little spreadsheet for the invoices
22 that we have. By the way, are there invoices sent every
23 month?

24 A. We receive a purchase order from Achieve and then we
25 submit an invoice every month, yes.

1 Q. And so there should be a payment every month?

2 A. Yes.

3 Q. What we have done here on Exhibit 177-A is we have
4 summarized what we have, but it looks like there are some
5 months missing here. For example, at the top we're missing
6 December of 2015, and maybe we're missing April of 2016, but
7 what you're telling me is there should be additional
8 invoices, we just don't have them?

9 A. So the way that billing works with Achieve, it is
10 basically 30 days delayed, so if we accept a project, in
11 this instance, in November of 2015, the first bill would be
12 due in December of 2015. So the first one -- there really
13 wouldn't be a bill until 30 days later but, yes, there
14 should be in April --

15 Q. All right. The invoices we do have total 128,000 and
16 some odd dollars, but we should also, if we want to be more
17 accurate, we would fill in the missing amounts?

18 A. Yes. If we want to be completely accurate, I believe
19 it was the February one that you pulled up, and it was 1,200
20 to us and roughly 5,000-ish to expenses.

21 Q. Yes. Since you started doing work for GhostBed through
22 Big Couch or Achieve you have been paid at least \$130,000?

23 A. Our company has, yes.

24 Q. Is GhostBed the largest source of income that you have
25 right now?

1 A. GhostBed is definitely in the top three.

2 Q. Do you believe that if you attacked GhostBed on the
3 H.M.R. website, GhostBed would still want to pay you \$10,000
4 a month?

5 MR. SPERLEIN: Objection, speculation.

6 THE COURT: Overruled.

7 THE WITNESS: I am sorry. Could you repeat?

8 MR. MAGLEBY: Sure.

9 BY MR. MAGLEBY

10 Q. If you decided to attack GhostBed on the H.M.R.
11 website, do you believe that GhostBed would still pay you
12 \$10,000 a month?

13 A. I don't attack. If GhostBed did something that was
14 questionable, I would have no problem publishing that at the
15 risk of no longer working with them through consulting
16 through Achieve.

17 Q. My question is a little different, sir. Do you expect
18 that if you were, let's say, asking questions of GhostBed
19 the same way and with the same vigor that you have asked
20 questions of Purple, do you think GhostBed would still want
21 to pay you \$10,000 a month?

22 A. I don't know how they would respond.

23 Q. Let's go back to Exhibit 155, which is the chart.

24 It is true, is it not, there are no written agreements,
25 written contracts or services agreements at these different

1 levels here that I have put the arrows on, GhostBed to
2 Achieve and Achieve to Social Media Sharks, right?

3 A. As far as GhostBed to Achieve I don't know. I have
4 never seen anything. And then achieve to Social Media
5 Sharks, for all of our clients we have zero written
6 agreements.

7 Q. So it is a monthly --

8 A. Just a monthly -- yeah, basically a 30-day termination.

9 Q. So there is nothing to stop GhostBed, for example, from
10 ceasing payments to Achieve that are for your services?

11 A. To my knowledge it is a 30-day window. They have to
12 provide 30 days to all clients. But to answer your
13 question, yes, I believe after a 30-day notice, then they
14 can cease.

15 Q. Have you ever discussed the future economic
16 relationship with Mr. Werner?

17 A. In the very beginning I talked about just the
18 excitement of their business, but not as far as for being an
19 employee.

20 Q. Any discussion about you getting a share of the profits
21 or a bonus or anything like that?

22 A. Nothing.

23 Q. Now, you have claimed under oath, have you not, sir,
24 that you make very little money from the H.M.R. website?

25 A. When I first launched, yes.

1 Q. Well, has it gone up since you first launched?

2 A. It has gone up as my services have gone up, yes.

3 Q. Let's look at what you said in March of this year. I'm
4 going to put up on the screen your declaration filed in this
5 case.

6 Do you recognize this as the declaration you filed in
7 this case in response or in support of a motion to stay a
8 temporary restraining order?

9 MR. HORWITZ: Your Honor, could Mr. Magleby please
10 put the entire document in front of the witness as opposed
11 to just pulling out pieces?

12 MR. MAGLEBY: Absolutely. I'm happy to do that.

13 BY MR. MAGLEBY

14 Q. Mr. Monahan, in front of you are three white binders.
15 Every exhibit that I'm putting up on the screen is contained
16 in those binders.

17 Just for the record, I have given courtesy copies
18 of the binders to both Mr. Horwitz's team and to
19 Mr. Sperlein's team.

20 BY MR. MAGLEBY

21 Q. If you would like to take that binder right in front of
22 you, sir, and turn to tab number three or Exhibit Number 3.
23 If at any time in my examination you would like to look at
24 the entire exhibit in hard copy or electronically, just let
25 me know and I would be glad to do that.

1 A. Yes, sir.

2 MR. MAGLEBY: Your Honor, I also have a set of the
3 binders for your clerk, if they would like it.

4 THE COURT: We are okay. Just move on.

5 MR. MAGLEBY: Yes. Understood.

6 BY MR. MAGLEBY

7 Q. Mr. Monahan, is this the declaration that you signed?

8 I will flip to the signature page.

9 A. Yes, sir.

10 Q. And on or about March 7, 2017?

11 A. Yes, sir.

12 Q. Let's go to the second page, paragraph 11. You told
13 this Court in March of this year that Honest Reviews, L.L.C.
14 has a single source of income which is Google AdSense, which
15 places ads on each page key to each individual user's
16 browser history.

17 Is that true?

18 A. Yes, sir.

19 Q. And you only make about \$50 a day from that; is that
20 right?

21 A. Yes, at that time.

22 Q. Has it gone up since then?

23 A. Yes.

24 Q. What is it at now?

25 A. Roughly \$100 a day.

1 Q. So that would be around \$3,000 a month now?

2 A. Averaging, yes.

3 Q. Let's go ahead and take a look at Exhibit 95. This is
4 a FundMe page that you set up; is that correct?

5 A. Yes, sir.

6 Q. If we go to the second page, when you set this up, what
7 you represented to the public was you generate an average of
8 less than \$50 per day from Google AdSense; is that correct?

9 A. Yes, sir.

10 Q. Now, at least up through March of 2017, at \$50 a day
11 you are making about \$1,500 a month?

12 A. Yes, around that.

13 Q. Your attorney fees in this case I assume have been more
14 than \$1,500 a month?

15 A. Yes, sir.

16 Q. Your expert witness costs for Dr. Godleski I assume are
17 more than \$1,500 a month?

18 A. I paid a one-time fee. Yes.

19 Q. You paid a one-time fee to Dr. Godleski. How much was
20 that?

21 A. Roughly \$3,000.

22 Q. Where did that money come from?

23 A. I had money saved from Social Media Sharks earned in
24 the past and my business Net Ninja earned in the past.

25 Q. Did Mr. Werner, GhostBed or Nature's Sleep or any of

1 the Werner parties contribute or make any payments toward
2 the costs of Mr. Godleski?

3 A. Not on my report, no.

4 Q. Not on your report, did you say?

5 A. Yes, sir.

6 Q. You mean the initial report that he did?

7 A. Yes. I paid for that in full.

8 Q. Since then he has submitted additional materials which
9 Judge Benson mentioned this morning.

10 Who paid for those?

11 A. Ethan Horwitz and team had those reports, I didn't.

12 Q. You didn't pay for those?

13 A. No, sir.

14 Q. Interesting. Do you have any explanation as to why
15 GhostBed is footing the bill for an expert witness that you
16 hired in this case?

17 A. Just simply to show proof is my understanding.

18 Q. That saves you money having to pay Dr. Godleski
19 yourself, does it not?

20 A. We're all paying money to defend ourselves, so I am not
21 sure --

22 Q. You're not sure if that saves you money if somebody
23 pays a bill for your expert?

24 A. I didn't know that he was doing that himself. I didn't
25 know they had that report done.

1 Q. You mean GhostBed's lawyers went to the expert that you
2 hired without your knowledge and paid him to prepare a
3 supplemental filing in this court?

4 A. They worked with my attorney. I am not sure.

5 Q. Did you give permission for your expert to work
6 directly with GhostBed?

7 A. I gave permission to my attorney to do whatever we
8 needed to do.

9 Q. This is not the first time that GhostBed's attorneys
10 have appeared on your behalf, is it?

11 A. No, sir.

12 Q. In fact, there is litigation involving GhostBed and
13 Casper; is there not?

14 A. There is.

15 Q. And you received a subpoena in that case; is that
16 correct?

17 A. I did.

18 Q. And you prepared a response which we can see in Exhibit
19 64.

20 Is that your response?

21 A. Yes, sir.

22 Q. Who represented you in responding to that subpoena?

23 A. Mr. Horwitz.

24 Q. If we go to the last page, can you see Mr. Horwitz's
25 signature block?

1 A. Yes.

2 Q. Is that Mr. Horwitz's name right there?

3 A. It is.

4 Q. Who paid for Mr. Horwitz to represent you in the Casper
5 litigation?

6 A. GhostBed and Nature's Sleep.

7 Q. You didn't have to come out of pocket to respond to
8 that subpoena?

9 A. No, sir. I was made aware at the time since I was
10 simply a witness that that was totally fine.

11 Q. Then did you go ahead and work with Mr. Horwitz
12 directly on how to respond to that subpoena?

13 A. I worked with their law firm to put together this
14 information, yes.

15 Q. That is not the only time Mr. Horwitz has stepped up
16 and represented your interests in a fight, is it? He has
17 done that other times, hasn't he?

18 A. I don't know.

19 Q. Well, let's take a look at Exhibit 224. Are you
20 familiar with Amerisleep.

21 A. I am.

22 Q. What I have put up here is a document dated December 6,
23 2016. It is from the law firm of Jaburg Wilk and addressed
24 to you, Honest Reviews, L.L.C.

25 Do you see that?

1 A. Yes.

2 Q. It says this law firm represents One Mall Group, L.L.C.
3 and Astrabeds, L.L.C, d/b/a amerisleep.com.

4 Do you see that?

5 A. I do.

6 Q. They sell mattresses, right?

7 A. They do.

8 Q. In this demand letter they complain that you have
9 published an article that makes misleading statements; is
10 that correct?

11 A. That was their claim.

12 Q. And they say to you, given your position as the chief
13 brand officer of GhostBed, a direct competitor of
14 Amerisleep, the article appears to be an intentional hit
15 piece against Amerisleep disguised as a purported
16 investigative journalistic article by an employee or
17 contractor of a direct competitor.

18 It is similar to the allegations in this case, yes?

19 A. That is what they said here, yes.

20 Q. This letter was addressed to you, not to GhostBed?

21 A. Correct.

22 Q. Who responded to this letter?

23 A. I believe both I received it and I do believe they
24 e-mailed GhostBed. I don't know who at GhostBed. I
25 responded to them also.

1 Q. I have not seen your response. Do you think you
2 produced it in this case?

3 A. If I haven't, I easily can.

4 Q. Here is a letter from Carlton Fields back to the Jaburg
5 Wilk firm dated December 8, 2016.

6 Have you seen this before?

7 A. No.

8 MR. HORWITZ: Your Honor -- Mr. Magleby, if you
9 could just highlight the first paragraph as well, please.

10 MR. MAGLEBY: I am going to. Don't worry, I will
11 get there.

12 BY MR. MAGLEBY

13 Q. Let's take a look at the body of this. Well, let's
14 start here.

15 Who signs this letter?

16 A. From what I see it looks like Mr. Horwitz.

17 Q. And Mr. Horwitz makes a representation. Mr. Monahan is
18 not the chief brand officer. He is not even an employee of
19 GhostBed. Mr. Monahan has done some consulting for
20 GhostBed, but is not related to GhostBed in any way.

21 In December of 2016 aren't your monthly payments
22 \$9,600?

23 A. Yes, sir.

24 Q. And then he writes, in addition, GhostBed has nothing
25 to do with Honest Mattress Reviews or with the article in

1 question, and then he writes GhostBed was not involved in
2 the article in any way and certainly is not in control of
3 what Mr. Monahan may write.

4 Do you see that?

5 A. That is 100-percent true. Yes.

6 Q. Were you aware of this letter before it went out?

7 A. I have never seen this letter before.

8 Q. All right. Did you prepare for this hearing with
9 GhostBed's attorneys in any way?

10 A. No, sir.

11 Q. Who is going to pay your travel costs for this hearing?

12 A. I am paying it out of pocket.

13 Q. Do you expect to be reimbursed by either Achieve or
14 GhostBed or any of the Werner parties?

15 A. No, sir. It is solely on me.

16 Q. Do you have any verbal or indemnification agreement
17 with any of the Werner parties?

18 A. No, sir.

19 Q. Do you have any expectation or understanding that if
20 you lose this case the Werner parties will help pay your
21 bill?

22 A. No, sir.

23 Q. Let's talk about the very first review that you did on
24 the H.M.R. site.

25 Do you remember what it was?

1 A. Probably Sunrising Bed.

2 Q. Which one was it?

3 A. Sunrising Bed.

4 Q. Sunrising Bed.

5 What is the second one that you did?

6 A. I don't remember the order to be honest.

7 Q. Let's take a look at Exhibit 8.

8 MR. MAGLEBY: What I will represent to the Court
9 and the parties is we have a number of screen shots that we
10 have captured at different times, some of which are from the
11 Wayback Machine and some which are directly from the
12 website. What we have put up in the top here is some of the
13 information about when and where we captured it. You can
14 see that this is honestmattressreviews.com. It was probably
15 the result of a search, GhostBed and mattress reviews.

16 BY MR. MAGLEBY

17 Q. In any event, sir, let me --

18 MR. SPERLEIN: Your Honor, just one thing. Unless
19 there is some sort of verification from someone at Wayback
20 Machine, I object as to authentication of anything that is
21 submitted from the Wayback Machine.

22 THE COURT: Well, let's hear your next question.

23 MR. MAGLEBY: Sure.

24 Your Honor, obviously we are in an injunction
25 hearing, so the Court is capable of weighing evidence

1 without the traditional application of the Rules of
2 Evidence.

3 BY MR. MAGLEBY

4 Q. Let me ask you this question which I bet you can
5 answer, sir. On August 10, 2016, did you do a review of
6 GhostBed's mattress?

7 A. Yes, sir. I don't remember the exact date, but
8 according to the date stamp here, yes, sir.

9 Q. Does this look like it is from your website?

10 A. 100 percent.

11 Q. Whether or not GhostBed was the first review you did,
12 coincidentally it was a very early review you did?

13 A. Yes.

14 MR. HORWITZ: Objection, Your Honor. The kinds of
15 comments like coincidentally I think are uncalled for. I
16 mean, just ask the question as opposed to coloring the
17 question.

18 THE COURT: Well, it is cross-examination. It is
19 okay. Overruled.

20 Go ahead.

21 MR. MAGLEBY: Just to be clear, and Christine has
22 reminded me, this is not the Wayback Machine.

23 BY MR. MAGLEBY

24 Q. You gave the GhostBed mattress a little over four
25 stars; is that correct?

1 A. My rating system, sir, does not go off stars. You
2 actually have to go on to the review. It is one to ten.

3 Q. One to ten. Okay. Well, for some reason on your
4 website here you have four stars.

5 A. That is just the star. You actually have to go to the
6 page. If you can pull up the actual review, I can show you
7 how I rate them.

8 Q. These stars appear on this page from your website,
9 right?

10 A. Correct.

11 Q. If somebody came to this website and saw the page we
12 are looking at, they would see over four stars for GhostBed,
13 right?

14 A. Correct.

15 Q. In your declaration, and let's go to the fourth page of
16 it, paragraphs 16 and 17, you describe ordering a Purple
17 mattress; is that right? Let me help you out here.

18 I recently ordered a Purple mattress and had it
19 delivered to my office; is that correct?

20 A. That is.

21 Q. And then you took photographs and video of it, and you
22 opened it up and you cut out a piece of it and you sent it
23 to Dr. Godleski?

24 A. Yes, sir.

25 Q. Do you recall when you ordered that mattress?

1 A. I don't remember the exact date.

2 Q. Let me see if I can help you out. Let's take a look at
3 Exhibit 158. This is a document that says, hey, Ryan, your
4 Purple order is confirmed. Here is what you ordered. Order
5 date, February 11, 2017.

6 Does that look right?

7 A. 100 percent.

8 Q. That Purple mattress costs about \$1,000, correct?

9 A. It does.

10 Q. That would be at least at that time two-thirds of
11 Honest Reviews, L.L.C.'s monthly income; is that right?

12 A. Should I pay in full. I took the monthly payment
13 options.

14 Q. So you paid over time for it?

15 A. Yes, sir.

16 Q. Did any money to purchase this mattress come from
17 GhostBed or the Werner parties?

18 A. No, sir.

19 Q. But back in September of 2016 you did a review of the
20 Purple mattress; is that right?

21 A. Yes, sir.

22 Q. And let's go here -- I have got it -- Exhibit 170, the
23 Purple mattress review here, August 11, 2016, correct?

24 A. 100 percent.

25 Q. How did you review a Purple mattress if you hadn't

1 bought one yet?

2 A. My review scale is not based on comfort. It is based
3 on things such as warranty duration -- if you actually can
4 pull up my review I can walk you through it. I have
5 reviewed many mattress that I didn't have at the time. I
6 base it on things that are objective such as sleep trial
7 duration, warranty duration, things along those lines.
8 Everything I do is based on value over cost, not based on
9 comfort.

10 Q. So you don't actually buy mattresses and have people
11 sleep on them?

12 A. When I first started the review site, I did not have
13 the mattress.

14 Q. I think there are roughly 24 mattresses that have been
15 viewed on your site right now. Are you saying you didn't
16 buy any of them?

17 A. I have 50 mattresses in my office right now.

18 Q. When you first started you didn't actually have the
19 mattresses, you were reviewing them based on other things?

20 A. Correct. I needed to get started before other mattress
21 companies would start to send mattresses for review.

22 Q. The first Purple mattress you ever bought was in
23 February of 2017?

24 A. Yes, sir.

25 Q. Okay. Well, let's take a look at Exhibit 8.1.

1 What is the first side-by-side mattress review that you
2 did?

3 A. I am not sure what I'm looking at.

4 Q. Maybe I have the wrong exhibit. I'm looking for the
5 September 27th, 2016 Purple versus GhostBed comparison.

6 In September of 2016 you did a Purple versus GhostBed
7 comparison?

8 A. I don't have the date but I do recall a comparison,
9 yes.

10 Q. So you didn't actually have a Purple mattress when you
11 did that review?

12 A. I didn't have a GhostBed mattress at that time either.

13 Q. So you posted a review and a comparison of a Purple and
14 GhostBed mattress without having either?

15 A. Yes, sir.

16 Q. Are you aware of the F.T.C.'s endorser guidelines?

17 A. Only loosely.

18 Q. Only loosely. Let me just ask you, do you know, and I
19 have put up Exhibit 160, if they say anything about
20 reviewing a product that you don't have?

21 A. I am not sure.

22 Q. I am going to put up page 14.

23 MR. HORWITZ: Objection, Your Honor. I don't
24 understand how this goes to what is supposed to be the sole
25 issue, which is the relationship or lack of relationship

1 between GhostBed and Mr. Monahan.

2 MR. MAGLEBY: Your Honor, it goes to his bias of
3 how he does reviews and whether or not this site is really a
4 journalistic site or whether it is just a sham. He is
5 reviewing mattresses that he does not even have. This all
6 goes to his credibility. Then this particular piece will
7 become relevant later in questions I'm planning to ask.

8 MR. HORWITZ: Your Honor, the witness has made it
9 clear that he is not reviewing them based on comfort, but
10 solely on objective criteria such as the length of the sleep
11 time, the guarantee, things that are objective as opposed --

12 THE COURT: The objection is sustained.

13 Move on.

14 MR. MAGLEBY: Thank you, Your Honor.

15 BY MR. MAGLEBY

16 Q. Let's take a look at Exhibit 117. Maybe this is the
17 one I was looking for.

18 Purple versus GhostBed mattress comparison. By the
19 way, is this a page from the Honest Mattress Reviews
20 website?

21 A. Yes, sir.

22 Q. Can we find the date here that this comparison
23 happened?

24 A. I can produce that. I'm not sure. It is not -- I
25 don't have any dates on it that way, but I can find it for

1 you.

2 Q. Let's see if I have got it somewhere. We will find the
3 September date.

4 Do you recall doing this review sometime early on in
5 the existence of Honest Mattress Reviews?

6 A. I would say the September or October-ish time frame. I
7 don't know it exact, but I can agree on that time frame,
8 yes.

9 Q. That is perfect. Thank you.

10 Was this the first side-by-side mattress review that
11 you had done?

12 A. I am not sure which was the first. It was definitely
13 in the beginning, but I don't know the order of publication.

14 Q. All right. You did a number of rounds in this review;
15 is that right?

16 A. Yes. Could you show the whole thing, though?

17 Q. Sure. If you want to open up the binder --

18 A. I just want to make sure I can explain it clearly.

19 Q. Sure. I'm not sure if that is really helping you much.

20 A. If you can do it from round one down to the nine points
21 just so that I can --

22 THE COURT: Ask a question. We have the time
23 down. Just ask a question.

24 MR. MAGLEBY: Yes.

25 BY MR. MAGLEBY

1 Q. You do round one right here; is that right?

2 A. Yes, sir.

3 Q. And then you do round two, cooling and comfort; is that
4 right?

5 A. Yes, sir.

6 Q. Let's go to the next page and take a look at this round
7 two discussion. You have five different categories here.
8 You have child comfort, teen comfort, millennial comfort,
9 Gen X comfort and baby boomer comfort, right?

10 A. Yes.

11 Q. Five different categories?

12 A. Yes, sir.

13 Q. Let's go down to round two summary. You told the
14 public this comparison required a large group of testers to
15 provide the most accurate comparison data. For each segment
16 we tested ten different people for each age category. This
17 provided us the ability to find the average total combined
18 scores. The key takeaway from round two is that both
19 mattresses provide great cooling and comfort.

20 A. Yes, sir.

21 Q. So that would mean that you had to have ten people in
22 each of these five categories actually sleep on the
23 mattress?

24 A. No. The way I conducted this research was through
25 YouTube.

1 Q. So you asked people to give you data?

2 A. I researched what people's opinions were.

3 Q. I see. Do you think a consumer might think you
4 actually had people come in and test mattresses that you
5 provided?

6 A. Based on what you read, yes, I can understand your
7 point there.

8 Q. Let's talk a little bit about the work you do for
9 GhostBed. But first, just to be clear, do you do any
10 separate work for Nature's Sleep or any other Werner related
11 company?

12 A. No, sir.

13 Q. Do you do any separate work for the Werners personally?

14 A. No, sir.

15 Q. You have an office that you go to when you work
16 sometimes?

17 A. Yes.

18 Q. Physical office, right?

19 A. You mean my office?

20 Q. Your office.

21 A. Yes, I have a location. Social Media Sharks has an
22 office in Boca Raton.

23 Q. And sometimes you go to GhostBed to provide services,
24 right?

25 A. No. We do attend a meeting that used to be monthly,

1 the whole Achieve team, and then it went to pretty much
2 every couple months.

3 Q. So there are regular meetings that you attend at
4 GhostBed?

5 A. There were more in the beginning but, yes, Achieve
6 would attend meetings at GhostBed's office, say once every
7 month to month and a half.

8 Q. And you can work remotely from wherever you are,
9 correct?

10 A. As long as I have internet connectivity, yes, sir.

11 Q. If you're doing work for the H.M.R. website, and then
12 you decide to do some work for GhostBed, do you get up out
13 of your chair and go sit at a different spot?

14 A. No, sir.

15 Q. Do you sometimes go back and forth, you're working for
16 GhostBed on moment and the next moment you are working for
17 H.M.R.?

18 A. No, sir.

19 Q. Do you keep track of your time? Do you have time
20 sheets?

21 A. No. I structure my day differently.

22 Q. I see. You set aside some time for GhostBed and you
23 set aside some time for H.M.R.?

24 A. Correct.

25 Q. But literally you might be in the same chair when you

1 are working for one or the other?

2 A. Yes, sir.

3 Q. And you would be using the same computer?

4 A. Yes, sir.

5 Q. And you have attended GhostBed staff meetings or
6 marketing meetings, correct?

7 A. I have attended the Achieve monthly meetings, yes.

8 MR. MAGLEBY: Just for the record, we found the
9 date of this Purple versus GhostBed comparison. It is
10 Exhibit 118. I am just going to pop it up for a minute.

11 BY MR. MAGLEBY

12 Q. Does that refresh your recollection, sir, as to the
13 date of that comparison, September 27, 2016?

14 A. Yes, sir.

15 Q. Going back to the staff meetings, does Marc Werner
16 attend those meetings?

17 A. He attended some.

18 Q. Does Ashley Werner, his daughter, attend those
19 meetings?

20 A. She also attended some.

21 Q. And there are agendas sometimes prepared for those
22 meetings?

23 A. Yes, sir.

24 Q. Are you listed on that agenda?

25 A. From time to time. Georgianne from Achieve generally

1 will put together the agenda.

2 Q. Let me have you look at Exhibit 208 and ask if this is
3 one of those agendas?

4 A. It looks like one, yes.

5 Q. This one says GhostBed's weekly marketing update. So
6 at some point in time were these meetings actually weekly?

7 A. Not for on-site ever.

8 Q. Not for on-site. How about remotely?

9 A. We have a telephone call, Achieve does, with GhostBed
10 every Tuesday.

11 Q. Every Tuesday. You have weekly meetings, they are just
12 not on-site?

13 A. Correct.

14 Q. And you participate in those weekly meetings?

15 A. Yes, sir.

16 Q. Have you done that since the beginning of the H.M.R.
17 website up through today?

18 A. Yes, sir.

19 Q. If we take a look here, and let's go to the third page
20 of Exhibit 208, for example, we can see here social media
21 review, Ryan.

22 Is that a reference to you?

23 A. Yes, sir.

24 Q. If we flip through these weekly meeting documents,
25 would we expect to see you represented in all of those

1 meetings addressing these kinds of social media issues?

2 A. No. Generally the social media wasn't a focal point on
3 here in the weekly meetings.

4 Q. Understood.

5 Would you be listed in the weekly meetings as attending
6 if you were there?

7 A. Yes, sir.

8 Q. Do you ever talk to the Werners on the telephone?

9 A. Yes, sir.

10 Q. I guess I should be clear, Marc and Ashley Werner; is
11 that right?

12 A. Yes.

13 Q. Ms. Anderson, Ms. Calisha Anderson's declaration said
14 you had mobile telephone calls with Marc and Ashley Werner.
15 That is true?

16 A. I have had mobile telephone calls, yes.

17 Q. Do you sometimes talk to them in the evening?

18 A. Yes.

19 Q. Did you have mobile telephone calls with Marc and
20 Ashley Werner in October and November of 2016 when you were
21 launching the H.M.R. website?

22 A. I don't believe with Ashley, but I speak with Marc,
23 yes.

24 Q. Some of these calls are even after traditional business
25 hours, after 5:00 p.m., correct?

1 A. Again, I don't function on traditional business hours,
2 because I get in at 9:00 in the morning and leave at 10:00
3 at night.

4 Q. I understand. My question wasn't that, though, sir.
5 It was that some of those calls are after 5:00 p.m.?

6 A. Yes, sir.

7 Q. Have you been to Marc Werner's house?

8 A. Never.

9 Q. Never been to his house. Have you ever, even once
10 talked to Mark or Ashley Werner about how the H.M.R. website
11 is doing?

12 A. Yes.

13 Q. Have you ever talked to them about the content of the
14 H.M.R. website?

15 A. Primarily focused just on my antithesis of affiliate
16 payments.

17 THE COURT: Say that again. Your antithesis of
18 what?

19 THE WITNESS: Affiliate commission payments. That
20 is a key differentiator with my site and every other site on
21 the planet.

22 THE COURT: Put that in plain English, will you?

23 THE WITNESS: Yes, sir.

24 Review websites generally make money from a
25 commission. If you go to the website and click a product,

1 company A and buy, that reviewer gets a commission. That is
2 how they monetize. I have zero affiliate commission
3 programs with any company.

4 BY MR. MAGLEBY

5 Q. Right. You make money from Google AdSense at least for
6 the website?

7 A. 100 percent, yes.

8 Q. Traditionally it has been \$1,500 a month, but at some
9 point after March it has gone up to \$3,000 a month?

10 A. As more reviews have continued to be published, yes.

11 Q. So Marc and Ashley Werner, they were aware that you
12 were going to launch the H.M.R. website, were they not?

13 A. No, sir.

14 Q. Total surprise to them?

15 A. Yes, sir.

16 Q. Never came up once in all of your discussions?

17 A. No, sir.

18 MR. SPERLEIN: Objection, Your Honor.

19 THE COURT: Overruled.

20 BY MR. MAGLEBY

21 Q. Will you admit that you have some affiliation with
22 GhostBed?

23 A. Can you define affiliation?

24 Q. Sure. Business relationship, collaboration,
25 association.

1 A. I do consulting and marketing through Achieve for
2 GhostBed, yes.

3 Q. And in the past you have worked with GhostBed regarding
4 competitive marketing about Purple, correct?

5 A. Yes, sir.

6 Q. In fact, there are a number of e-mails with you on one
7 hand and people at GhostBed on the other hand talking about
8 targeting Purple with advertising, correct?

9 A. If you bring them up I would be happy to confirm that,
10 yes.

11 Q. But does that sound generally correct, that you would
12 have exchanged e-mails about Purple with GhostBed?

13 A. I would have received probably e-mails about all
14 competitors.

15 Q. Did GhostBed ever run advertising or an attack on
16 Purple about using recycled materials?

17 A. I know there was a comparison chart.

18 Q. Let's take a look at Exhibit 18.

19 Tell me if you recognize Exhibit 18.

20 A. Yes, sir.

21 Q. Who was involved in developing and approving this
22 advertisement?

23 A. Myself and Georgianne Brown and Marc Werner.

24 Q. Let's take a look at Exhibit 17.

25 This is an e-mail dated April 4, 2016 from you to Marc

1 Werner and also to Ashley Werner; is that correct?

2 A. Yes, sir.

3 Q. The tagline is Purple, right?

4 A. Yes, sir.

5 Q. And you write, I am asking permission rather than
6 forgiveness here, L.O.L.

7 L.O.L. stands for laugh out loud?

8 A. Yes.

9 Q. Why ask for permission rather than forgiveness?

10 A. I am asking for permission because it is not my company
11 and I am not an employee, so when I built that ad, I know
12 that users are very graphical, so I didn't just want to just
13 publish something without their permission.

14 Q. All right. And you write can I create a graphic that
15 shows recycled materials versus new materials for Facebook,
16 then target Purple mattress users?

17 Correct?

18 A. Yes, sir.

19 Q. What you do is you create the graphic and if somebody
20 goes on Facebook and they search for the word Purple or
21 Purple mattress, this ad will pop up?

22 A. No, sir.

23 Q. No. How does it work?

24 A. You described more of a search query from Google. On
25 Facebook all it was was targeting anyone interested in a

1 mattress, not specific to Purple's brand.

2 Q. I see. So it is a mistake when you typed then target
3 Purple mattress users?

4 A. Yes. The correct statement would be mattress buyers.

5 Q. Then the last thing you write is it is a direct blow at
6 them, but figured I would ask before I get us in trouble.

7 You wrote that?

8 A. Yes, sir.

9 Q. So a moment ago you told me you were talking about all
10 mattress users and it was just a mistake, but when you write
11 it is a direct blow at them, are you referring to Purple?

12 A. I am referring to Purple as far as for the graphic but
13 not for who is being targeted.

14 Q. Understood. Okay. You asked Marc Werner for
15 permission rather than forgiveness before you attacked
16 Purple on the H.M.R. website?

17 A. I never talked with Marc Werner about Purple on the
18 H.M.R. website.

19 Q. Is GhostBed interested in how Purple related posts, so
20 posts and comments from the Internet, on the H.M.R. website
21 affect consumers?

22 A. Can you ask that again?

23 Q. Sure. Does GhostBed track how Purple related posts on
24 the H.M.R. website or H.M.R. tweets affect consumers?

25 A. I have no clue how GhostBed tracks anything.

1 Q. Aren't you and Mr. Werner regularly notified about
2 negative Purple comments that arise from the H.M.R. website?

3 A. I don't know how Mr. Werner would be notified.

4 Q. All right. Does Achieve, the company that GhostBed
5 pays and that pays you, track these comments and send e-mail
6 notices to you and GhostBed and Mr. Werner?

7 A. Achieve has nothing to do with Honest Mattress Reviews.

8 Q. I want to show you a document that we obtained from
9 Achieve. It is a large spreadsheet. So Exhibit 195 is a
10 P.D.F. In the binder it is 195-A. It will either be a disk
11 or a zip drive that has the original. Down in the bottom
12 left-hand corner here we have the Achieve control number,
13 which is ACH-4571. Let me see if any of this refreshes your
14 recollection as to what Achieve does.

15 Here we have in the top left-hand corner subject or
16 title, sender or created by, and recipients in the to line.
17 Under this first entry it says Steve Hergert commented on a
18 link Honest Mattress Reviews shared.

19 Is that a consumer making a comment on something Honest
20 Mattress Reviews published out to the internet?

21 A. Yes.

22 Q. And it says sender or created by Facebook. So it is a
23 comment on Facebook?

24 A. Yes.

25 Q. Okay.

1 MR. HORWITZ: Objection, Your Honor. There is no
2 identification of what this document is, how it was created,
3 what it is there for. I mean, Mr. Magleby could ask the
4 witness, but to put a document in front of him that is an
5 assumption of what an agency does when he has no knowledge
6 of it, and then basically make hypotheses based on that I
7 think is objectionable.

8 THE COURT: Thank you.

9 The objection is overruled.

10 Go ahead.

11 BY MR. MAGLEBY

12 Q. Under recipients in the to line it says

13 [REDACTED].

14 Is that an e-mail that you have?

15 A. Yes, sir.

16 Q. When this comment got posted on Facebook, did you get
17 an e-mail notification about this comment?

18 A. Yes. All my e-mails do, because that e-mail is part of
19 my business manager account.

20 Q. Okay.

21 A. So if I get an e-mail from Honest Mattress Reviews or
22 from Achieve's Facebook, Facebook would auto populate this
23 e-mail, yes.

24 Q. And then you would get a notice?

25 A. Yes, sir.

1 Q. Then one of the things you might do is go read that
2 comment and comment back or reply?

3 A. I could if I chose to.

4 Q. If you chose to. Let's continue over a little further.
5 Then it says received or created and we have the date 10-20,
6 2016; is that right?

7 A. Yes, sir.

8 Q. Okay. Then there is recipients in the c.c. line over
9 here.

10 Are these people who also get that same e-mail that you
11 get?

12 A. No. I am not sure how they are there.

13 Q. You don't know what that is? If we take a look at the
14 recipients in this c.c. line, it has got your e-mail address
15 here, but it also has Ashley Werner at Nature's Sleep, does
16 it not?

17 A. That is what I see, yes.

18 Q. Do you have any reason to believe that that e-mail does
19 not go to the recipients in this c.c. line?

20 A. The reason I would say they would not is they are not
21 in the business manager. The way that Facebook sorts things
22 is through what is called a business manager. So Honest
23 Mattress Reviews is my own, and I am not sure how these
24 people would have received that auto e-mail.

25 Q. All right. Let me ask this. Have there been notices

1 of meetings to discuss the H.M.R. website that have been
2 sent out through this management software?

3 A. No.

4 Q. Let's go through this. The same page, bottom of the
5 first page it says M.F.R.M., Honest Reviews, touch base.

6 Do you see that?

7 A. I do.

8 Q. Do you know what that is a reference to?

9 A. I do.

10 Q. What is it?

11 A. That is one of the ongoing meetings I have with the
12 president and C.E.O. of Mattress Firm.

13 Q. And then it says [REDACTED], and that is your Achieve
14 e-mail, right?

15 A. Yes. I would assume that this is probably a calendar
16 entry.

17 Q. A calendar entry. Let's go over to the right-hand side
18 and we see this is 3-3-17, and it says WebEx meeting,
19 meeting number access code.

20 That is how you joined this meeting; is that right?

21 A. Yes, sir.

22 Q. And Marc Werner is listed over here on the right, isn't
23 he?

24 A. Yes, sir.

25 Q. And if we go through this exhibit, would you be

1 surprised if we find a number of comments about Purple?

2 A. Again, I'm not sure what that last column represents,
3 but I understand what it is, but I don't know how that
4 works.

5 MR. MAGLEBY: Just for the Court and counsel, what
6 we have done is we have blown up various excerpts so that
7 the hard copies are in the possession of the Court, although
8 you can blow it up in P.D.F. and see it. I just want to
9 look at one of them.

10 BY MR. MAGLEBY

11 Q. Here is one of these notices. That did not work the
12 way I wanted it to. Hold on. That is what happens when a
13 lawyer tries to use technology. Let's start over.

14 We can see here Jessica Knoll commented that Honest
15 Mattress Reviews, honesty community support album, and that
16 is something related to the H.M.R. website, right?

17 A. No, sir. That is a Facebook album.

18 Q. Facebook. But it is Honest Mattress Reviews' Facebook?

19 A. Yes, sir.

20 Q. She says glad I saw this. I was about to order a
21 Purple mattress but now I am thinking GhostBed is better.
22 Do you have reviews on that? Reply to this e-mail.

23 Do you see that?

24 A. I do.

25 Q. Then in the recipients under the c.c. line we again see

1 Marc and Ashley Werner, correct?

2 A. Yes. But, again, I don't know how that -- I don't even
3 know what that is. I understand it is an e-mail, but I
4 don't know how that got there or what it is.

5 Q. Did you search for and produce these e-mail notices,
6 because I don't think we got them?

7 A. No. Some of the names on this list I have never seen
8 in my life.

9 Q. At one point in time your online presence identified
10 you as the chief brand officer of GhostBed; is that correct?

11 A. Yes.

12 Q. And that included on LinkedIn and Twitter, correct?

13 A. Yes, sir.

14 Q. And in about October of 2016 these online references to
15 you as chief brand officer were taken down?

16 A. Yes, sir.

17 Q. Did it occur to you that consumers might search and
18 find online that you were identified as GhostBed's chief
19 brand officer, and that that might relate to how they view
20 the claim of independence by Honest Mattress Reviews?

21 A. No, sir.

22 Q. That didn't occur to you at all?

23 A. No, sir.

24 Q. LinkedIn is kind of like a resume, isn't it?

25 A. I would agree with that, yes.

1 Q. In fact, in this day and age of the electronic universe
2 we live in, some people don't even use resumes, they just
3 use LinkedIn. Is that your experience?

4 A. I could understand your position there, yes.

5 Q. Okay. With a resume don't you want to put in all of
6 your relevant experience? It is kind of a self-promotion
7 tool, right?

8 A. Yes, sir.

9 Q. There is no reference to your work for GhostBed on your
10 LinkedIn profile, is there?

11 A. At what time?

12 Q. Currently.

13 A. Currently, no, sir.

14 Q. And not after October of 2016, correct?

15 A. Correct.

16 Q. Now, if Mr. Werner says you were never the chief brand
17 officer for GhostBed; is that true?

18 A. That is true.

19 Q. So when you were holding yourself out as the chief
20 brand officer for GhostBed, were you rogue?

21 A. Yes, sir.

22 Q. You did it without his permission and knowledge?

23 A. When I published that, I published it in two places. I
24 published it on LinkedIn and on Twitter. I did it for when
25 I was actually presenting a case study at a conference for

1 digital marketing.

2 Q. Let's take a look at Exhibit 53.

3 Now, Exhibit 53 is a video and it is the video of that
4 digital marketing conference. Are you familiar with that
5 video?

6 A. Yes, sir.

7 Q. What I would like to do is play about a minute of that
8 video. I am hoping the audio will come through.

9 It does not sound like it is coming through. What I
10 would like to do very quickly is -- can we switch to that
11 laptop?

12 Sorry, Your Honor. Lawyers and technology. I am
13 going to come over here if that is okay. I will lean over.
14 Hopefully these speakers are such that we can hear.

15 (WHEREUPON, a video excerpt was played.)

16 BY MR. MAGLEBY

17 Q. How GhostBed actively launched a national brand using
18 Facebook.

19 Is that your presentation at this conference?

20 A. Yes, sir.

21 Q. Okay. So did Marc Werner not know you were doing this?

22 A. He was aware I was going the presentation, but I never
23 showed him my presentation.

24 Q. Okay. I want to go to I think 307.

25 Is this you being introduced at that conference?

1 A. Yes, sir.

2 MR. MAGLEBY: Your Honor, is that loud enough?

3 THE COURT: It is okay.

4 BY MR. MAGLEBY

5 Q. Who told the presenter to identify you as the chief
6 brand officer at GhostBed?

7 A. I did.

8 Q. He said he wanted to make sure he got it right. Did
9 you make sure with him beforehand that you would get the
10 title right?

11 A. No, I added it at the end, right before I went on.

12 (WHEREUPON, a video excerpt was played.)

13 BY MR. MAGLEBY

14 Q. Let's stop it there.

15 I notice on the stage there are a bunch of GhostBed
16 boxes.

17 A. Yes, sir.

18 Q. Did you get those from GhostBed?

19 A. Yes, sir.

20 Q. Did GhostBed pay to ship those to the conference?

21 A. No, sir.

22 Q. How did you get them there?

23 A. I put them in my car.

24 Q. So it was within driving distance?

25 A. It was in Orlando.

1 Q. Did you go to GhostBed and say, hey, I need these boxes
2 for this presentation?

3 A. I told them that I was asked to present the Facebook
4 case study at this presentation and asked if I could bring
5 in the empty boxes just to bring on stage, yes.

6 Q. Anybody ask you what you were going to represent your
7 role or position to be?

8 A. Not at that time.

9 Q. I see.

10 (WHEREUPON, a video excerpt was played.)

11 BY MR. MAGLEBY

12 Q. You said my name is Ryan and I am chief brand officer
13 of GhostBed, and you told that to everybody in the room and
14 it wasn't true. Is that what you're saying?

15 A. Yes, sir.

16 Q. You were being paid by GhostBed at the time, right?

17 A. I was being paid by Achieve at the time for work on
18 GhostBed's project, yes.

19 Q. Fair enough.

20 You did not say I am only a consultant for GhostBed,
21 did you?

22 A. No, sir.

23 Q. Have you spoken for GhostBed at other events?

24 A. I believe I attended one other event in Boston.

25 Q. All right.

1 MR. MAGLEBY: Ron, can we go back to my laptop?

2 BY MR. MAGLEBY

3 Q. Let me show you Exhibit 51.

4 Can you tell me what event this is?

5 A. That is the exact same event you just played.

6 Q. And it identifies you as being with GhostBed, not
7 Social Media Sharks, correct?

8 A. Correct, but I do want to point out, if I can?

9 Q. Sure.

10 A. That conference, if you actually pull up the website,
11 the way that they presented me for months leading up just
12 said Ryan Monahan founder of Social Media Sharks. I added
13 in the GhostBed.

14 Q. You added in GhostBed without permission?

15 A. Correct.

16 Q. Was Mr. Werner upset when he found out you had said you
17 were chief brand officer?

18 A. He was frustrated when I started using it on my own,
19 yes.

20 Q. And he told you to take it down?

21 A. Yes.

22 Q. And that was around the time you launched the H.M.R.
23 website?

24 A. I am not sure exactly when, but I know as soon as I was
25 asked I took it down.

1 Q. You had previously been an author or at least certain
2 articles were attributed to you on the GhostBed website,
3 correct?

4 A. I have had an account on GhostBed that my team used,
5 yes.

6 Q. If I go to Exhibit 59, and this is a Google search, and
7 it says Ryan Monahan, GhostBed, and the returns of this
8 search say Ryan Monahan, author at GhostBed, and then there
9 is the domain name for the GhostBed website.

10 Do you see that?

11 A. I do.

12 MR. SPERLEIN: Objection, Your Honor. I just want
13 to point out that Google returns are different on every
14 computer depending on the user. What appears on the screen
15 here today is not what another user is going to see.

16 THE COURT: Now we have got testimony from two
17 lawyers.

18 Overruled.

19 Go ahead.

20 BY MR. MAGLEBY

21 Q. Well, Mr. Monahan, I think you just told me that you
22 were previously identified as the author on at least some of
23 these things on GhostBed's site, right?

24 A. When Achieve was contracted, GhostBed provided access
25 to their blog, and this is the name that they registered the

1 account that we all used.

2 Q. Sometime after you launched the H.M.R. website your
3 name was taken off, wasn't it?

4 A. I am not sure.

5 Q. You are not sure. So if that happened, it was a
6 decision that was made by GhostBed?

7 A. I am not sure. The content we published, if you look
8 at these articles, it never had an author or tagline or
9 byline or anything like that.

10 Q. All right. If I go to Exhibit 60, these are some of
11 the same -- I will call them articles, but now the author is
12 identified as Sleepteam; is that correct?

13 A. That is what I see, yes.

14 Q. Now, you claim to be unbiased and independent on your
15 website, on the H.M.R. website?

16 A. Yes, sir. I cover the entire industry.

17 Q. You want consumers to believe that the website is
18 independent and unbiased?

19 A. I want consumers to have access to information about
20 all brands.

21 Q. But setting aside all brands, access to information
22 about all brands, isn't part of your pitch to the public
23 that this is an independent and unbiased website?

24 A. I don't use that terminology. I just simply say I
25 cover the entire industry regardless of size, capital

1 investment, it does not matter. However they are, as long
2 as they are in the sleep space, I cover them equally.

3 Q. Do you think a review site should be transparent about
4 all of its financial ties with a product manufacturer?

5 A. I think that is important.

6 Q. Should a review site be transparent about its personal
7 relationships or ties with the product manufacturer?

8 A. I do. That is why I disclosed on my disclaimer that I
9 have done consulting in this space and outside of this
10 space.

11 Q. Do you agree that it is better for a consumer to have
12 more truthful information than less?

13 A. I agree that consumers should have access to
14 information, yes.

15 Q. So you wouldn't have any objection to a truthful
16 disclaimer on your website?

17 A. I would have no objection.

18 Q. Well, let me have you look at a disclaimer that we put
19 together here. I want to ask you if these things are true.

20 MR. HORWITZ: Objection, Your Honor. What does
21 his willingness to put something on his website in the
22 future have to do with the issue that we're here for? This
23 is a hypothetical about what he may be willing to do in the
24 future and has nothing to do with what happened in the past
25 and the relationship or lack of relationship with GhostBed.

1 THE COURT: I didn't hear it that way. I heard
2 what I heard.

3 Overruled. Go ahead.

4 Are you about done?

5 MR. MAGLEBY: I probably have got 30 minutes. I
6 know it pains the Court.

7 THE COURT: All right. Go ahead.

8 MR. MAGLEBY: I apologize, Your Honor.

9 THE COURT: Go ahead.

10 BY MR. MAGLEBY

11 Q. The first bullet point is Ryan Monahan owns and
12 operates the honestmattressreview.com website.

13 True?

14 A. True.

15 Q. Second bullet point. Monahan has been paid at least
16 \$148,000 by mattress company GhostBed since November 2015.

17 True?

18 A. False.

19 Q. Ryan Monahan's company, Social Media Sharks, has been
20 paid at least \$148,000 from Achieve, which money originates
21 at GhostBed, since November of 2015?

22 THE COURT: We have been all over this. This is
23 just a summary. That is why I asked if you were about done.
24 This seems to me to be a summary.

25 Haven't we been over all of this?

1 MR. MAGLEBY: We have. This is to show the bias,
2 Your Honor.

3 THE COURT: Well --

4 MR. MAGLEBY: It is not an independent --

5 THE COURT: We have been over it. It has been
6 asked and answered. You're summarizing.

7 BY MR. MAGLEBY

8 Q. My question to you, Mr. Monahan, is would you have any
9 objection to putting truthful statements about your economic
10 relationship with GhostBed on Honest Mattress Reviews?

11 A. I would have no problem with a disclaimer, but we have
12 to be clear that Honest Reviews has no relationship with
13 Werner or any other mattress company in that instance.

14 Q. Other than the fact that GhostBed pays through a couple
15 different companies about \$10,000 a month?

16 A. A different business, yes.

17 THE COURT: I am going to take a ten-minute break.
18 When we come back you're going to have ten minutes remaining
19 with this witness.

20 MR. MAGLEBY: Understood, Your Honor.

21 THE COURT: And then we'll hear whatever is asked
22 on redirect examination.

23 Court is in recess for ten minutes.

24 THE WITNESS: May I step down?

25 THE COURT: You may step down.

1 (Recess)

2 THE COURT: Have you got it down to ten minutes?

3 MR. MAGLEBY: I have to.

4 THE COURT: Yes, you do.

5 Mr. Magleby, you may continue.

6 MR. MAGLEBY: Thank you, Your Honor.

7 BY MR. MAGLEBY

8 Q. Mr. Monahan, earlier in the examination you said that
9 you are just asking questions. That is what you're doing on
10 the website, asking questions?

11 A. In relation to what? I have 900 articles.

12 Q. Purple.

13 A. With Purple I have asked questions but I have also
14 promoted Purple heavily.

15 Q. One question or complaint you have about Purple is you
16 say that Purple does not acknowledge the possible risks of
17 the powder; is that right?

18 A. Yes, sir.

19 Q. And one complaint is that Purple does not have proof of
20 safety for the use of the powder on the mattress?

21 A. Yes, sir.

22 Q. And one complaint is that Purple does not have
23 scientific studies showing eight hours a night with ten
24 years of exposure is a safe level?

25 A. Yes, sir.

1 Q. Is it your position that GhostBed gets the same level
2 of review as Purple?

3 A. Every company in the industry gets the same level of
4 review.

5 Q. Okay. So GhostBed uses a form of latex in its
6 mattresses, does it not?

7 A. Yes, sir.

8 Q. If we look at the GhostBed frequently asked questions,
9 which I have put up on Exhibit 241, there is a series of
10 statements. What type of latex is used in the GhostBed
11 mattress? Can the synthetic latex in the GhostBed mattress
12 cause allergies?

13 Do you see that?

14 MR. HORWITZ: Your Honor, can Mr. Magleby identify
15 whether this is from Honest Mattress Reviews or from the
16 GhostBed website?

17 MR. MAGLEBY: Sorry. This is the GhostBed
18 website.

19 MR. HORWITZ: Thank you.

20 BY MR. MAGLEBY

21 Q. Have you seen this before?

22 A. Yes.

23 Q. I'm curious. Have you ever publicly on the H.M.R.
24 website asked questions about GhostBed's use of latex that
25 are the same questions you have asked about Purple?

1 A. No, and the reason is Purple never disclosed the powder
2 on their website until five months or four months after I
3 asked.

4 Q. Once they disclosed it, though, you asked a number of
5 follow-up questions, like do you have scientific studies?
6 What is the powder? I want to know the composition. You
7 asked all of those kinds of questions, right?

8 A. I asked what is it? Is it safe? Is it safe to touch?
9 Is it safe to inhale?

10 Q. Right. Have you ever asked on the H.M.R. website the
11 same questions about GhostBed's use of latex?

12 A. No, sir.

13 Q. Are you aware that latex allergies can cause death?

14 THE COURT: Well, now we have gone beyond where I
15 want to be on this hearing.

16 MR. MAGLEBY: Your Honor, it shows the bias.

17 THE COURT: I understand. I'm cutting you off.

18 MR. MAGLEBY: I understand, Your Honor. I was
19 really excited about that, too.

20 THE COURT: You can pursue it at another time.

21 MR. MAGLEBY: I will.

22 BY MR. MAGLEBY

23 Q. Mr. Monahan, are you aware of the argument in this case
24 that you put a lot of work into the H.M.R. website, and it
25 would be a lot of work and it wouldn't make sense if the

1 website was just a sham for GhostBed?

2 A. Am I aware that I put in a lot of work and it would be
3 a sham if it was just for GhostBed?

4 Q. Yes.

5 A. Yes.

6 Q. So is that true that you do put in a lot of work?

7 A. I put in a lot of work in my network and my platform,
8 yes.

9 Q. And do you put a lot of work into writing the articles
10 that appear on the website?

11 A. Yes.

12 Q. So if we go to the home page, for example, and I
13 represent this is the page that I think we captured
14 yesterday, 9-15, 2017, from the H.M.R. website.

15 Does this appear to be your website?

16 A. Yes.

17 Q. And then there are these boxes down here and they say
18 things like breaking news, industry news, and these are some
19 of the articles that you say you write?

20 A. Yes. The order would be -- there are two that publish.
21 The two most recent are on the top, and then once a third
22 one comes, it pushes to the bottom left and works its way
23 over.

24 Q. Then if we go down further, I guess here we can see
25 something about Purple on your home page even today, right?

1 A. Yes, sir.

2 Q. It is very expanded and kind of big, isn't it?

3 A. No, sir.

4 Q. You don't think that is bigger than the other articles?

5 A. No, sir.

6 Q. Okay. Then if we go down, here are more of these
7 articles here, right?

8 A. Yes, sir.

9 Q. Then you also have a news page, which I think is -- we
10 won't spend time on that.

11 Let me look at this article. Is this an example of one
12 of the articles that you wrote?

13 A. This is an example of content on my site, yes.

14 Q. Content on your site?

15 A. Yes.

16 Q. You didn't write it?

17 A. Some content is curated and some content is
18 republishing press releases and some is unique to me.

19 Q. But this says by Honest Mattress Reviews, does it not?

20 A. That is just the account author.

21 Q. That is the account author. Have you plagiarized
22 articles on your website?

23 A. I have repurposed articles, yes.

24 Q. Repurposed. What do you mean when you say repurposed?

25 A. Articles can exist elsewhere. My goal is just to bring

1 all of the industry news about all brands to one centralized
2 location.

3 Q. Have you published articles or information on your
4 website without attributing it to the original author?

5 A. Yes.

6 Q. In fact, if we put this one on the left and we put
7 Exhibit 139 up, Mattress Recycling, a U.S. Success Story,
8 written by Kirstin Linnenkoper, July 12, 2017, you don't
9 attribute this article to Ms. Linnenkoper, do you?

10 A. Not in this instance, no.

11 Q. Do you have a licensing agreement with Ms. Linnenkoper
12 where she allowed you to use this?

13 A. No, sir.

14 Q. If we look through Exhibits 140 and 141, would we see
15 the same thing repeated? Here we have --

16 MR. HORWITZ: Objection, Your Honor. Again, this
17 is a -

18 THE WITNESS: This a press release too.

19 MR. HORWITZ: This has no relevance or any
20 possible relationship with GhostBed.

21 THE COURT: Sustained.

22 Well, I don't know that I'm agreeing with you, but
23 I am saying it is beyond the scope of this hearing.

24 MR. MAGLEBY: Sure.

25 MR. HORWITZ: Thank you, Your Honor.

1 THE COURT: It appears to me to be.

2 MR. MAGLEBY: Your Honor, just for the record, the
3 point I was trying to make is at the last hearing Ms. Yost
4 argued it would be silly for Mr. Monahan to spend so much
5 time writing articles if this was just a sham. The point is
6 he is not writing them.

7 MR. HORWITZ: Your Honor, if this is the time for
8 argument, we have plenty of argument to make as well.

9 THE COURT: Let's move on.

10 Your next question, please.

11 BY MR. MAGLEBY

12 Q. Mr. Monahan, we asked you to produce all -- I am sorry.

13 MR. MAGLEBY: My last three minutes, Your Honor.

14 BY MR. MAGLEBY

15 Q. Let me have you take a look -- I can't find it.

16 I found it. Sorry.

17 You said that Mr. Werner was upset when he found out
18 you were using the title chief brand officer; is that right?

19 A. Yes. He asked me to stop.

20 Q. Let me have you look at Exhibit 48. Let's go down to
21 the bottom here. This is an e-mail exchange, and I may not
22 be on the earliest page, but at the bottom of the first page
23 there is an e-mail to Sherry Bullock and to you,
24 ryanmonahan@ghostbed.com.

25 Do you see that?

1 A. I do.

2 Q. What is the date?

3 A. August 19th.

4 Q. 2016?

5 A. Yes, sir.

6 Q. And on this e-mail you have a signature block that says
7 Ryan Monahan, chief brand officer, GhostBed, Crafted
8 Perfection.

9 Do you see that?

10 A. I do.

11 Q. Was that an auto insert of your signature block?

12 A. So this e-mail, if you look below the original
13 e-mail -- I'm sorry. Leave it right there and I can
14 explain.

15 Q. I was going to move it for you.

16 A. That is fine. Achieve was asked to start doing some
17 e-mail marketing, so I wanted to run a test to see if an
18 e-mail that comes across from a person as opposed to a
19 company, so an example would be if you got an e-mail from
20 Amazon, if you get an e-mail from Jeff Bezos at Amazon how
21 basically would users respond. So it was in that e-mail
22 blast that I set that up and then this was just the response
23 from it.

24 Q. So you sent out an e-mail blast that identified
25 yourself as chief brand officer to a number of potential

1 customers?

2 A. To permission based opt end customers, yes.

3 Q. How many?

4 A. I don't know at this time.

5 Q. More than ten?

6 A. I have no clue the size of the e-mail.

7 Q. 1,000?

8 A. Again, you would have to ask them.

9 Q. Now, I noticed earlier when you were talking to Mr.
10 Werner you said I want to ask forgiveness rather than -- I
11 want to ask permission rather than forgiveness because it
12 was his company, right?

13 A. Correct.

14 Q. Did you ask Mr. Werner for permission rather than
15 forgiveness before you sent out this e-mail blast
16 identifying yourself as the chief brand officer?

17 A. No, sir. The e-mail that you brought up earlier was
18 from 4-14. This e-mail is months later.

19 Q. All right. That is right, but my question was whether
20 you had asked permission.

21 Did others at GhostBed know you were using the title
22 chief brand officer?

23 A. Others knew when I put it on the e-mail blast.

24 Q. In fact, if we go to the top of this document you
25 write, hey, Sherry, let's track down Mr. Dennis. He is the

1 man who can make things happen. You carbon copy Dennis
2 Manning; is that right?

3 A. Yes, because I have no authority at GhostBed. I can't
4 offer a discount so I simply connected from the e-mail
5 marketing to the customer service.

6 Q. So Mr. Manning saw you use chief brand officer; is that
7 right?

8 A. I would assume.

9 Q. And Mr. Manning is a GhostBed employee, correct?

10 A. Yes. I'm not sure of his exact title, but I know he
11 runs the customer experience.

12 MR. MAGLEBY: That is it, Your Honor. I will get
13 out of the way. Thank you for your patience.

14 THE COURT: Thank you.

15 Mr. Horwitz?

16 Mr. Sperlein, you'll be going first?

17 MR. SPERLEIN: Bear with me for just a few
18 moments.

19 THE COURT: Yes.

20 REDIRECT EXAMINATION

21 BY MR. SPERLEIN

22 Q. Good morning, Mr. Monahan. How are you?

23 A. I'm doing well, sir. Thank you.

24 Q. I will start off with a question. Could you explain
25 your business plan for Honest Mattress Reviews, please.

1 A. Yes, sir, and I will keep it quick.

2 Q. Thank you.

3 A. Honest Reviews I believe in ten years from now can
4 replace Consumer Reports. My goal is to identify target
5 niche markets, so Honest Mattress Reviews is one of my five
6 sites that I operate today. I also cover fashion,
7 technology, beauty, and we're getting into movies.

8 Q. Let me interrupt you there. This morning we have only
9 talked about a website called Honest Mattress Reviews. Are
10 you saying that there are other websites using that same
11 Honest Reviews branding?

12 A. Yes, sir.

13 Q. Thank you for that.

14 Again, I want you to clarify one thing. You said that
15 it could replace Consumer Reports?

16 A. Yes, sir.

17 Q. Just explain briefly for the Court what that is.

18 A. There are two reasons I believe this.

19 Q. No. Explain, please, what Consumer Reports is.

20 A. Consumer Reports is basically the staple and the
21 authority for reviews and they review everything from
22 ketchup to cars.

23 Q. Have they been around for a long time?

24 A. Yes, sir.

25 Q. So you see yourself as a newer version of a review

1 site?

2 A. I believe with the trajectory that they are on that
3 they are trending downward, and I believe there is going to
4 be a need as more consumers go to the internet to find a
5 replacement.

6 Q. How do your websites, your honest review websites work?

7 A. Honest Reviews works as a platform or a location. My
8 goal and objective is to provide information. So as Mr.
9 Magleby said, yes, I publish content and curate it. Honest
10 Mattress Reviews has 900 articles. I cover the entire
11 industry, whether it is a merger or a new product launch. I
12 don't gate information the way that a --

13 Q. I am going to interrupt you again. What does that
14 mean, gate information?

15 A. A lot of the major media sources such as Huffington
16 Post or Mashable choose to only publish what is most popular
17 in the news. I publish all brands regardless of their
18 position.

19 Q. Okay. Thank you.

20 You said that you published over 900 articles on Honest
21 Mattress Reviews?

22 A. Yes, sir.

23 Q. Does this look familiar to you, Mr. Monahan?

24 A. Yes, sir. This is a listing of every article that is
25 on my site since launch. Just to be clear, the left column

1 represents which brand or company it is about. The middle
2 is the exact U.R.L. The right would be the date it was last
3 modified, the article.

4 Q. So these are all articles about different mattresses?

5 A. Yes. Not just mattresses, it also covers pillows,
6 sleep tech, anything sleep related.

7 Q. Are all of the articles relevant to a single brand?

8 A. No, sir. It covers all brands.

9 Q. Well, any single article -- what I'm asking is is each
10 article specific to a brand? Do you only review or talk
11 about a particular brand in an article?

12 A. No. Some are individual and some are -- an example
13 would be a recent one had Leesa and Casper relative to the
14 West Elm deal that they did. Some can have multiple brands
15 in an article and some can have a singular brand.

16 Q. How about articles that are not related to any brand
17 whatsoever, but that are just relevant to the mattress
18 industry generally?

19 A. Yes. I also cover that. An example would be mattress
20 recycling. I publish a lot on that due to the fact that
21 they are filling up landfills. An example would be recently
22 California just passed a law --

23 Q. Let's slow down for the benefit of the court reporter
24 and for me. He may be able to type that fast, but I am
25 going to cut you off briefly because I want to ask you

1 something. You said that you published an article about
2 mattress recycling. That was the article that Mr. Magleby
3 just had up a few minutes ago?

4 A. That was one of them. I have published many from
5 around the world.

6 Q. Do you know if that article that he had up earlier had
7 any restrictions on republication?

8 THE COURT: I am not going to allow that question.
9 I cut him off and I am not going to let you go into the same
10 thing. I want to explore the association with GhostBed.

11 MR. SPERLEIN: I understand.

12 THE COURT: I don't think it is disputed that he
13 runs what he runs and that he has put out all of these
14 articles during this time running this website. I think we
15 all know why we are here. If we could focus on that I would
16 really appreciate it.

17 MR. SPERLEIN: I certainly will, Your Honor, but I
18 think it is important to understand that what --

19 THE COURT: Just let me hear your next question.

20 MR. SPERLEIN: Okay.

21 THE COURT: I cut him off and I will cut you off.
22 I just want to explore the association that was represented
23 to me in some declarations between this gentleman and
24 GhostBed. That is what I have limited Mr. Magleby to, and
25 you apparently want to explain his entire business operation

1 and going into movies and fashion and all these articles. I
2 just don't see how that is pertinent to what I want to have
3 happen here today.

4 MR. SPERLEIN: I understand, Your Honor.

5 THE COURT: Okay.

6 MR. SPERLEIN: I will do my best.

7 THE COURT: Please.

8 BY MR. SPERLEIN

9 Q. Mr. Monahan, did you set up this website, Honest
10 Mattress Reviews, so that you could attack Purple to the
11 benefit of GhostBed?

12 A. No, sir. I actually am a huge fan of Purple, in the
13 beginning when I started the site.

14 Q. Have you written articles that are favorable to
15 GhostBed?

16 A. For GhostBed, yes.

17 Q. And how about Purple?

18 A. Yes.

19 Q. That is what I meant to ask.

20 MR. MAGLEBY: Your Honor, just for housekeeping
21 and Mr. Sperlein, maybe we should start numbering these in
22 the 500 range.

23 MR. SPERLEIN: Okay.

24 MR. MAGLEBY: Just so we have some number when I
25 go back to the office.

1 MR. SPERLEIN: Absolutely. Thank you, Jim.

2 If the first exhibit, which was the spreadsheet,
3 if we could mark that as Exhibit 500, please.

4 THE COURT: You don't have your exhibits marked
5 until now?

6 MR. SPERLEIN: I'm sorry, Your Honor.

7 This will be 501.

8 BY MR. SPERLEIN

9 Q. Can you just take a look at that article that I handed
10 you and give me a brief explanation as to what it is?

11 A. Yes, sir. Around Halloween I published an article just
12 saying what we were going to be dressed up as for Halloween.
13 If you go to page 3 you can see the content. So what we did
14 was we figured we would create our costumes, so what we did
15 was we took some of the top brands. For example, Purple, we
16 included Goldilocks, Leesa, we included Tuft & Needle,
17 Casper and GhostBed.

18 If you go to the third page you can see we were
19 promoting all three of these brands with their individual
20 logos.

21 Q. Thank you.

22 Were there other instances where you did that, just had
23 articles about all of the --

24 A. Yes. The most recent would be Labor Day. I promoted
25 the entire mattress industry including Purple for the sale.

1 Q. Thank you.

2 Mr. Monahan, could you look at Exhibit 195.1? This is
3 the exhibit that Mr. Mableby was showing to you before which
4 appears to be some sort of spreadsheet. I believe you said
5 that you had never seen this before; is that correct?

6 A. That is correct. I have never seen this in my life.

7 Q. Can you explain to me what you believe it is?

8 A. Just based on what it looks like, I have an Achieve
9 account that is connected also to my Facebook business
10 manager. That is how you can manage different pages on
11 Facebook. To me this looks like an auto populated e-mail,
12 because this bottom one with the president of Mattress
13 Firm -- I recall this. This was an actual meeting I had had
14 with him, so I'm not sure how it is populated, but I do know
15 that it is somehow related to the Achieve account.

16 Q. So this sends out auto notifications when there are
17 comments on a website? Is that --

18 A. No, sir. Not on the website, on Facebook.

19 Q. Facebook?

20 A. Yes, sir.

21 Q. Would that be articles about anything in the mattress
22 industry?

23 A. To be honest I am not sure, because I have never seen
24 this before. I can reference these comments just because I
25 see them, but I am not sure what --

1 Q. Can you tell if it appears to be called out to just
2 deal with events or comments on Facebook that deal with
3 Honest Mattress Reviews?

4 A. Just based on what I can see here in the far left
5 column, it does reference Honest Mattress Reviews, and then
6 the bottom one, again, that I remember as a meeting.

7 Q. But would it make sense that it would also send e-mails
8 for other mattresses?

9 A. Yes. Well, it would make sense that it would send them
10 for anything connected to my business manager account, so
11 the 50 plus pages in there.

12 Q. Thank you.

13 Has GhostBed paid you for anything related to this
14 website at all?

15 A. No, sir.

16 Q. Earlier when you were talking about the reviews on the
17 website, can you tell me what role consumer reviews play on
18 your website?

19 A. Yes. So my website has a review that I break down the
20 objective things such as sleep trial, materials, costs.
21 Additionally, every single mattress on my website has the
22 ability for consumers to go there and share their own
23 experience with each product.

24 Q. Okay. Do you select which reviews are published on the
25 website or not?

1 A. No. That is actually a differentiator between what I
2 do and the mattress companies. The mattress companies have
3 the ability to filter what reviews are published. Honest
4 Reviews uses the same technology but auto publish
5 everything.

6 Q. Is that important to the value of your website?

7 A. Yes. In the future my objective and goal is to have a
8 completely community driven review. My review score would
9 mean nothing. I simply break down the products, here is the
10 value, pros and cons, and let consumers decide on the
11 overall rating.

12 Q. For mattress companies they often publish consumer
13 reviews as well, don't they?

14 A. Yes, sir.

15 Q. Do they publish all reviews?

16 A. No, sir. Unfortunately in this industry what I have
17 seen is they hand select which ones to publish.

18 Q. But sometimes you will see a one or two, low ratings on
19 those, right?

20 A. Yes, sir. But those, again, are hand selected so it
21 does not really provide consumers the true experience. That
22 is the one stars, because they understand consumers want to
23 see one stars, but they are the hand selected one stars.

24 Q. Mr. Magleby asked you some questions about your legal
25 fees. I just want to double-check. You're paying all of

1 your own legal fees for yourself individually and for Honest
2 Mattress Reviews; is that correct?

3 A. Yes. I have used up my entire savings on this.

4 Q. Has it created a financial strain on you?

5 A. Tremendous.

6 Q. When did you first start Honest?

7 A. I first conceptualized with William Bertolbe, my
8 partner at Social Media Sharks, as we were doing the
9 research back in December of 2015. That is actually when I
10 registered my first domain name, Mattress Review Guru. We
11 started talking about building a website and started buying
12 domain names, and then started putting it together, and then
13 I actually launched it myself August, September, October-ish
14 of 2016. Originally the idea of building a review platform
15 started in December of 2015.

16 Q. When did you start working for at the time Big Couch
17 Media or later Achieve?

18 A. I started working with Achieve in September of 2015.

19 Q. Okay. When did you first meet Marc Werner?

20 A. We were first made aware of the project in November of
21 2015 when Big Couch/Achieve asked if we wanted to work on
22 the project. I first met him in December of 2015.

23 Q. So that was after you had already launched your
24 website?

25 A. That was after we had already started looking into it,

1 yes.

2 Q. I'm sorry. Repeat the date when you met Marc Werner
3 the first time.

4 A. I met Marc Werner in December of 2015 and I purchased
5 my first domain in 2015. We basically -- Achieve gave us a
6 month to do research, put together proposals, and in all of
7 that we realized that this industry was tremendously growing
8 and saw the need and value based on the current market with
9 the affiliates.

10 Q. To reiterate, you don't accept affiliate payments? In
11 other words, you don't get a bonus for promoting one
12 mattress over the other?

13 A. No, sir. It does not matter what product you buy or
14 don't buy. I don't benefit in any way, shape or form.

15 Q. But you do acknowledge that you have a relationship
16 with GhostBed outside of Honest Mattress Reviews; is that
17 correct?

18 A. Yes, sir.

19 Q. Do you disclose that anywhere on your website?

20 A. Yes, sir. Well, I disclosed in my disclaimer that I
21 have done consulting for companies in the space as well as
22 outside of the space.

23 Q. Where does that disclaimer appear on your website?

24 A. It appears on every single page on the footer, and then
25 on every single article it also is at the bottom of the

1 text, so it is on every page in two spots.

2 Q. Okay. If you click that, then it has a longer version?

3 A. It has my picture, my name, and everything about me you
4 could ever pretty much want to know.

5 MR. SPERLEIN: If you will give me just a minute,
6 Your Honor?

7 THE WITNESS: In fact, I don't know if it helps,
8 but if you go to this page I can show you where it lives.

9 BY MR. SPERLEIN

10 Q. That is Exhibit 501?

11 A. Yes. If you go to 501, for example, and then cruise
12 down to -- you can see the media outreach and I reach out to
13 Purple, and in this instance Casper, GhostBed, Tuft &
14 Needle, and then you can see at the bottom of this tweet
15 right here there is a disclaimer here, as well as if you
16 go to -- I don't know if this shows the footer -- also right
17 here.

18 Q. That is at the bottom of the page?

19 A. Yes, sir.

20 Q. I asked Ms. Yost if she could pick up the actual
21 wording on that disclaimer.

22 A. Yes. For example, this is an article published
23 yesterday, so if you go down, you'll see it in two places.
24 Right here. You will always see the disclaimer right there
25 on the left underneath that tweet, above the five shares,

1 and then additionally if you go down in the footer of every
2 page in the darker color, keep going all the way, right
3 here, a disclaimer on the very last line with the copyright.

4 Q. Has that disclaimer been on your website since the
5 beginning?

6 A. Yes. I updated my disclaimer when I, quote, officially
7 launched. This would have gone out September or October. I
8 don't have the exact date on that, but this has been on
9 there unchanged even with the typos.

10 Q. Yes. Can you point out where it is that you
11 specifically say that you work in the space and do
12 consulting for others?

13 A. Yes, sir. If you go right below my tweet stream, right
14 here, this has been published. I occasionally do speaking
15 engagements, but typically I am not paid for them. I do
16 consult for many companies in the space as well as other
17 industries at various capacities.

18 Q. Okay. You wrote that?

19 A. Yes, sir.

20 Q. And that is true?

21 A. It is 100-percent true.

22 Q. Thank you.

23 Does your website have any other potential for
24 monetizing in the future since you don't accept affiliate
25 relationships?

1 A. Yes. There are two other revenue streams that since
2 March have launched. I publish a report once a month that
3 covers the entire industry. That is on sale and anyone can
4 purchase it. Then I also am trying to build my own ad
5 network, where instead of Google running the ads on my site,
6 anyone can purchase the ads. The differentiator with why I
7 want to move away from Google is Google charges based on
8 what they feel the value of the click is, so every time
9 someone clicks they have to pay. I want to create a flat
10 fee. Whether you are the biggest company or the smallest
11 company you pay the exact same amount for the exact same
12 exposure.

13 Q. Thank you.

14 I am handing you another exhibit. This is 502. Is
15 this the monthly report?

16 A. This is the monthly report, yes.

17 Q. You said you sell this?

18 A. Yes, sir.

19 Q. To whom?

20 A. Anyone. Anyone can purchase this whether it is someone
21 in the space, a hedge fund, an investor, anyone who wants
22 access to kind of the state of the industry.

23 Q. Okay. Just very briefly, please, what kind of
24 information is in it?

25 A. I will keep it very quick. I break it into three

1 different categories. The first is I survey the people who
2 come to my site to ask consumer insight questions. My goal
3 is to be able to provide direct feedback to all mattress
4 companies based on what people are doing. So a quick
5 example would be consumer insights. What is the most
6 important factor when looking for brand on-site reviews? I
7 run a survey monkey and collect the data and put it in here.

8 Q. I think that is sufficient. Thank you.

9 A. Yes, sir.

10 I should note, too, that --

11 THE COURT: There is no question.

12 THE WITNESS: Okay.

13 BY MR. SPERLEIN

14 Q. Earlier today you were talking about an e-mail blast
15 that you did that had a title, a GhostBed title at the
16 bottom of that e-mail.

17 A. Yes, sir.

18 Q. Explain to me again, and I'm not quite sure I
19 understand, this was a test; is that correct?

20 A. Yes, sir. Achieve was tasked with the objective to try
21 to do e-mail marketing to see how the results would be as
22 opposed to their internal team. So when we put it together,
23 the test we created was to test how would a user respond if
24 it looked like it came from a real person, even though it
25 was an e-mail blast, relative to a company.

1 Q. How did it come to be that you decided to use a made up
2 title for you instead of someone who was actually working in
3 the company?

4 A. When I put it together -- I will be honest. I just
5 built the e-mail and put my information in there. I was
6 running the test. I didn't ask anyone. I just did it.

7 Q. So you just didn't give it much thought?

8 A. No. I was more excited about running a test than --

9 Q. What were the results of the test?

10 A. Actually by putting a person -- making it seem
11 personal, it outperformed tremendously compared to just
12 coming from a brand or a company.

13 Q. Did GhostBed act on that information?

14 A. The only information then when we moved forward was we
15 obviously eliminated me and it just says coming from Marc or
16 the sleep team or different departments. We started kind of
17 creating different department to see how that would work.

18 Q. To the best of your knowledge, after that initial test
19 that had you listed in a fantasy title, was that title ever
20 used again in any e-mails?

21 A. No, sir.

22 Q. Mr. Magleby showed you some other e-mails that were
23 addressed to you throughout the day, a bunch of different
24 ones. Were any of those e-mails directed to you at
25 [REDACTED]?

1 A. I don't recall. I don't think so.

2 Q. Okay. If you don't recall I will get them and have you
3 take a look.

4 If you would, look at Exhibit 17.

5 A. Yes, sir. This is my Big Couch e-mail.

6 Q. Right. Could you tell me the e-mail address?

7 A. My e-mail address at Big Couch is
8 [REDACTED].

9 Q. It is not from [REDACTED]?

10 A. No, sir.

11 Q. Did you ever receive any personal e-mails addressed to
12 you at [REDACTED]?

13 A. I don't believe so, no.

14 Q. Did you consider that to be your e-mail account?

15 A. No. We just simply used that when we were setting up
16 online marketing campaigns.

17 Q. It was just for that testing; is that correct?

18 A. Yes, that and one other service, but the same thing, to
19 test. Once we would put it together, then we would turn it
20 over to the internal team.

21 Q. Thank you.

22 Did you ever review Nature's Sleep?

23 A. Yes.

24 Q. Did you review that mattress during the initial month
25 or two of your website opening?

1 A. It would have been not the very first one. I'm not
2 sure exactly when because time has passed, but I did review
3 one from Nature's Sleep, yes.

4 Q. What kind of rating did Nature's Sleep get?

5 A. Not very high.

6 Q. Can you remember and quantify it?

7 A. My rating system goes from world class, good, standard,
8 average and poor. It would be the fourth from the bottom.
9 The cost value just does not equate.

10 Q. And who owns Nature's Sleep?

11 A. Marc Werner.

12 Q. Is it a brand?

13 A. It is --

14 THE COURT: We have been over this with
15 Mr. Magleby and I understand the connection.

16 MR. SPERLEIN: I will mark this as Exhibit 503.

17 THE COURT: I am going to take a five-minute
18 recess and ask you to mark your exhibits so that we don't
19 have to wait while you are handing them to the court clerk.
20 I have not had this happen in years. Five-minute recess.

21 Court is in recess.

22 MR. SPERLEIN: Thank you, Your Honor.

23 (Recess)

24 THE COURT: All right. Please, your next
25 question.

1 MR. SPERLEIN: I apologize again to the Court. I
2 only have a few more and then Mr. Horwitz will ask a few.

3 Does everyone have Exhibit 503?

4 THE COURT: Yes.

5 BY MR. SPERLEIN

6 Q. Mr. Monahan, can you just tell me a little bit about
7 this article again briefly?

8 A. Yes. I will keep it brief. This article was published
9 either on the day or the day after Purple released one of
10 their new videos for a product launch. I have always been a
11 huge fan of the Harmon brothers and their marketing so I
12 covered it here. What it does is it does two parts. It
13 talks about the video and it also puts on here about the
14 mattress protector, which was the product, as well as how to
15 buy and how to shop right on here.

16 Q. Would you characterize this article as favorable toward
17 Purple?

18 A. Yes.

19 Q. Have you written other articles that you would
20 characterize the same way as being favorable to Purple?

21 A. Absolutely.

22 Q. And for right now I'm talking about the time prior to
23 the filing of this lawsuit. Can you tell me approximately
24 how many other articles you --

25 THE COURT: Could I interrupt you? I'm going to

1 not allow this. This has been briefed and it has been shown
2 and it is in the record. The position that Mr. Monahan and
3 the defendants have taken has been very clear to me before
4 today. The only thing that changed and that caused this
5 hearing to happen was the declaration of Calisha Anderson
6 that focused on the affiliation between Mr. Monahan and
7 GhostBed.

8 MR. SPERLEIN: I understand, Your Honor, but --

9 THE COURT: We are plowing old ground. You can
10 refer to it. There will be briefing and you can refer to
11 the fact that he had some favorable reviews of Purple.

12 MR. SPERLEIN: Okay. Your Honor, thank you very
13 much.

14 THE COURT: You're welcome.

15 MR. SPERLEIN: That is exactly -- I won't argue.

16 BY MR. SPERLEIN

17 Q. Eventually you wrote an article questioning the powder
18 on the Purple mattress; is that correct?

19 A. Yes, sir.

20 Q. Did Marc Werner tell you to write those articles?

21 A. Absolutely not.

22 Q. What motivated you to write those articles?

23 A. Really what motivated me was when I saw the Sleep
24 Sherpa, who is another reviewer, unbox the Purple pillow, as
25 soon as he opened it I got concerned.

1 Q. I have handed you Exhibit 504.

2 Can you tell me what you see in that exhibit?

3 A. This is what I was just referencing. This gentleman is
4 a reviewer named Ben. He goes by the Sleep Sherpa. He was
5 unboxing and showing kind of the first impression of the
6 Purple pillow. In this review he kind of talks about the
7 technology, and then as he opens it, he lifts it and you
8 just see a tremendous amount of powder covering the pillow.

9 Q. How did you come to view that video?

10 A. I watch all the reviewers videos.

11 Q. No one from GhostBed forwarded this video to you?

12 A. No. I follow all of these guys.

13 MR. SPERLEIN: Your Honor, I am going to let Mr.
14 Horwitz ask a few questions, if that is okay with you.

15 THE COURT: Thank you.

16 Mr. Horwitz.

17 MR. HORWITZ: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. HORWITZ

20 Q. Good morning, Mr. Monahan.

21 A. Good morning, sir.

22 Q. I am going to hand you what has been marked as Exhibit
23 705, which is also docket entry 31-2.

24 Can you tell me what that is?

25 A. Yes, sir. This looks like a screen grab of my mattress

1 reviews page.

2 Q. Now, this is where you rate the mattresses?

3 A. Yes, sir.

4 Q. And you have a rating on the top, world class, good,
5 standard, fair, poor, et cetera?

6 A. Yes, sir.

7 Q. Okay. Now, looking down you rated ten mattresses as
8 world class?

9 A. Yes, sir.

10 Q. One of which is GhostBed?

11 A. Yes, sir.

12 Q. Did Mr. Werner call you up and say how dare you rate me
13 one of ten world class? With the amount of money I'm paying
14 you I should be the only world class?

15 A. No, sir.

16 Q. Because he didn't pay you anything?

17 A. Not to Honest Mattress Reviews.

18 Q. And he has no input into what appears on Honest
19 Mattress Reviews?

20 A. No one was input other than me.

21 Q. Looking at the second page of this exhibit, it is the
22 eighth one down, is that Nature's Sleep?

23 A. Yes, sir.

24 Q. That has red with an arrow going down. Is that rated
25 fair?

1 A. Yes, sir.

2 Q. Again, Mr. Werner didn't call you and say with
3 everything I'm paying you how dare you rate me as only fair?

4 A. No, sir.

5 Q. Again, can you tell me whether or not he has any input
6 into Honest Mattress Reviews?

7 A. He has zero input in any form.

8 Q. And he has not suggested any articles, forget about
9 whether it is Purple, any articles as to Honest Mattress
10 Reviews?

11 A. No, sir.

12 Q. Does he get advance notice of any articles on Honest
13 Mattress Reviews?

14 A. No, sir. No one gets advance notice. Everyone gets
15 access once it's published live.

16 Q. Now, I'm going to show you what has been marked as
17 Exhibit 799, which is one of the pages out of your website.

18 This is industry talk. One-on-one interviews with the
19 industry's leaders.

20 A. Yes, sir.

21 Q. Let's go down to the first one. Is that Mr. Billy
22 Williams? Who is that?

23 A. Mr. Billy Williams is the founder and C.E.O. of Urban
24 Mattress.

25 Q. Let's go do to Mr. Alvaro Vaselli.

1 A. He is the founder of Nuvanna.

2 Q. Ms. Alexandra Setterian?

3 A. She is one of four cofounders for Eat Sleep.

4 Q. And Mr. Ken Murphy?

5 A. He is the C.E.O and president of Mattress Firm.

6 Q. And these are people who are industry leaders who you
7 have interviewed?

8 A. Yes.

9 Q. And you published their interviews?

10 A. Yes.

11 Q. Mr. Ken Murphy, did you publish one interview with him?

12 A. No, sir. I think there are roughly about ten. So the
13 function was we would get on the call once a week and spend
14 about an hour talking about the interview and then publish
15 it the next week.

16 Q. Is Mattress Firm a leader in the industry?

17 A. Mattress Firm is the largest retail mattress company in
18 the United States.

19 Q. Mr. Ken Murphy thought it important enough to spend a
20 lot of time with you to get these interviews published?

21 A. Yes, sir.

22 Q. And he thought that was good for his company?

23 A. He thought that was great.

24 Q. Once again, did Mr. Werner say, well, if it is good for
25 his company it is good for my company too, and why didn't

1 you interview me as an industry leader because of all of
2 this money I'm paying you to do the Honest Mattress Review
3 site?

4 A. He never said anything like that.

5 Q. And he didn't pay you anything?

6 A. Zero dollars.

7 Q. He didn't influence you as to what to write?

8 A. No, sir.

9 Q. He didn't suggest anything about what to write?

10 A. No, sir.

11 Q. He didn't get any advance notice of what was being
12 written on the website?

13 A. No, sir.

14 MR. HORWITZ: No further questions, Your Honor.

15 THE COURT: Thank you.

16 Mr. Magleby, anything further?

17 MR. MAGLEBY: Just a couple on redirect, Your
18 Honor.

19 THE COURT: Recross actually.

20 MR. MAGLEBY: Recross. Correct.

21 RECROSS-EXAMINATION

22 MR. MAGLEBY: Lawyers and technology. I
23 apologize.

24 BY MR. MAGLEBY

25 Q. Mr. Monahan, what was name of the first mattress you

1 think you reviewed?

2 A. I don't remember the first one published, but the first
3 one I had in my possession was Sunrising Bed.

4 Q. The first one you got was Sunrising Bed. So would you
5 be surprised -- when did you review that? When did you
6 publish the review?

7 A. I don't recall the date.

8 Q. Would you be surprised that if we go to your website,
9 and this is not an exhibit, because we just navigated to the
10 website, that the review we were able to find -- I can't
11 blow that up -- is dated January 22, 2017?

12 A. I see that, yes. I am not sure if that is the last
13 time I did an update on it though.

14 Q. All right. Understood. Let's take a look at the
15 GhostBed review. Let me get my technology going here.
16 Exhibit 8.1. This is the GhostBed mattress review August
17 10, 2016; is that correct?

18 A. Yes, sir.

19 Q. Does that date have any other significance to you?

20 A. No, sir.

21 Q. Let's take a look at Exhibit 7.1. This is the domain
22 name registration. Is that the same day that you posted
23 that GhostBed review?

24 A. That is the same day it is registered, but it does not
25 mean it is the same day I started working on the site.

1 Q. Understood. Doesn't this show the day you acquired the
2 domain name?

3 THE COURT: We have covered this ground earlier.
4 You did. I am listening.

5 MR. MAGLEBY: I know you are, Your Honor.

6 THE COURT: Do you have any new questions?

7 MR. MAGLEBY: Let me see.

8 BY MR. MAGLEBY

9 Q. You were asked about the H.M.R. business plan and that
10 you wanted to take over Consumer Reports. You have two
11 sites, right? One is Honest Mattress Reviews and that does
12 mattresses?

13 A. I have five sites.

14 Q. Okay. And the other sites do other things, a wide
15 variety of things?

16 A. They cover fitness, fashion, beauty and technology.

17 Q. You were handed exhibit -- I believe it was 500. You
18 have 900 articles; is that right?

19 A. Yes, sir.

20 Q. That spreadsheet. You only spend three hours a day
21 working on the site, the H.M.R. website, right?

22 A. Yes, sir.

23 Q. So can we conclude from that that almost all of these
24 articles are actually copied from other sources?

25 A. Some are. Some are curated. Some are press releases.

1 Some content the mattress companies submit to me in final
2 format for publishing.

3 Q. Do you have a single copyright license agreement with
4 an article that you have copied from another website?

5 THE COURT: Didn't I already ask you not to go
6 into this?

7 MR. HORWITZ: Objection.

8 THE COURT: Anything on true recross that was
9 truly redirect on the subject that --

10 MR. MAGLEBY: I will try, Your Honor.

11 THE COURT: Okay. I think we are about done.

12 MR. MAGLEBY: Your Honor, I am going to take your
13 lead, unless I see something just fascinating in my notes.
14 Yes.

15 BY MR. MAGLEBY

16 Q. Exhibit 503 is this unboxing of the Purple pillow and
17 review, and that is when you first learned about the powder
18 on the Purple mattress?

19 A. Pardon me?

20 Q. You said Exhibit 503, this Purple pillow review dated
21 December 30, 2016, that is when you figured out there was
22 this powder on the mattress?

23 A. No. I discovered that when Sleepopolis did their
24 mattress unboxing roughly mid February of 2016.

25 Q. Thank you.

1 MR. MAGLEBY: No further questions, Your Honor.

2 THE COURT: All right.

3 Any reason why we are not done here?

4 MR. HORWITZ: One issue, Your Honor, and I will be
5 very quick about it.

6 THE COURT: Okay.

7 MR. HORWITZ: Could you leave that up, please?

8 MR. MAGLEBY: Sure.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. HORWITZ

11 Q. Is it very common to develop a website and then go
12 online on a certain day when the website is ready?

13 A. Yes.

14 Q. So you would have done reviews and all of that in
15 preparation for going live?

16 A. Absolutely.

17 Q. And then when you go live, that is the day that the
18 entire work that you have done -- I think you said you
19 worked on it for months beforehand, so everything that you
20 have done all of the previous months would be dated the day
21 you went live?

22 A. Correct.

23 Q. And the day you went live is the registration date of
24 the domain name?

25 A. Yes.

1 Q. So the fact that it has -- whatever has this date means
2 not that it was done on that date, but it went live on that
3 date?

4 A. Yes, sir.

5 MR. HORWITZ: No further questions, Your Honor.

6 MR. MAGLEBY: Your Honor, no further questions for
7 this witness.

8 We call Marc Werner.

9 THE COURT: Thank you.

10 You can step down.

11 THE WITNESS: Thank you all for your time.

12 THE COURT: Now, is this witness excused or do you
13 suspect that he might be re-called? Mr. Magleby?

14 MR. MAGLEBY: I am not anticipating re-calling
15 him. I think it is unlikely, but I would like him to stick
16 around just in case and in case the Court has some
17 follow-up.

18 THE COURT: The answer is no?

19 MR. MAGLEBY: The answer is no.

20 THE COURT: Then this witness is not yet excused.

21 There is a slight possibility, Mr. Monahan, that
22 you might be re-called. You need to stick around. We'll
23 let you know.

24 MR. MONAHAN: Yes, sir.

25 THE COURT: Mr. Sperlein can help you with that.

1 MR. SPERLEIN: Your Honor, can he go in the lobby
2 and be on the telephone?

3 THE COURT: Yes. He can roam around out there.
4 There is no one else in the building. We'll see how we are
5 doing. We might take a little lunch break in a while but
6 I'm not sure.

7 Mr. Werner, come forward, please, sir, and I'm
8 going to ask you to be sworn in as a witness in this
9 hearing.

10 MARC WERNER

11 Having been duly sworn, was examined
12 and testified as follows:

13 MR. HORWITZ: If I may approach --

14 THE COURT: Yes, you may.

15 MR. HORWITZ: -- to give the witness some water?

16 THE WITNESS: Marc Werner, M-a-r-c, W-e-r-n-e-r.

17 THE COURT: Mr. Magleby, you may proceed.

18 MR. MAGLEBY: Thank you.

19 DIRECT EXAMINATION

20 BY MR. MAGLEBY

21 Q. Mr. Werner, you claim that Mr. Monahan made a mistake
22 when he called himself the chief brand officer?

23 A. Yes.

24 Q. You didn't know that was going to happen?

25 A. No.

1 Q. In fact, he filed a declaration with the Court that
2 recited those facts; is that correct?

3 Let me do it a different way, Mr. Werner. I am going
4 to show you what we have marked as Exhibit 1. Now, I
5 realize you were not here so I will repeat what I have said
6 before. Those three binders in front of you, sir, have hard
7 copies of every exhibit that I will use. If at any time you
8 want to look at a hard copy or you think there is something
9 on the screen that I'm not showing you, let me know.

10 Will you do that?

11 A. Yes.

12 Q. What I have done to try to save time is put up on the
13 screen something called the declaration of Marc Werner filed
14 in this case March 9, 2017.

15 Do you recall this document?

16 A. Yes.

17 Q. Did you review it?

18 A. Yes.

19 Q. Did you sign it?

20 A. Yes.

21 Can you make it a little bigger?

22 Q. Yes. Absolutely. Let me take you to the seventh page
23 and I will make it bigger.

24 A. I can't see it that well.

25 Q. I suffer from that as well.

1 It says here pursuant to 28 U.S.C. Section 1746, I
2 declare under penalty of perjury and under the laws of the
3 United States of America that the foregoing is true and
4 correct.

5 There is your signature, correct?

6 A. Yes.

7 Q. You understood this was signed under the penalty of
8 perjury?

9 A. Yes.

10 THE COURT: Put that microphone over by your
11 mouth, please, so we can hear you.

12 THE WITNESS: Is this better?

13 THE COURT: That is a lot better. Thank you.

14 BY MR. MAGLEBY

15 Q. I want to go to the second page, sir, and paragraphs 13
16 and 14 which I have blown up.

17 Mr. Monahan is not and has never been chief brand
18 officer at GhostBed. Do you stand by that today?

19 A. Yes.

20 Q. Mr. Monahan at one time mistakenly identified himself
21 on Twitter and LinkedIn as chief brand officer of GhostBed.

22 Do you stand by that today?

23 A. Yes.

24 Q. I notice it does not say, though, anything about
25 e-mails. When Mr. Monahan was sending e-mails with the term

1 chief brand officer, was that also a mistake?

2 A. Yes.

3 Q. Okay. Then you say in October of 2016 when GhostBed
4 learned that Mr. Monahan identified himself this way, it
5 requested that he delete these incorrect references.

6 Is that true?

7 A. Yes.

8 Q. Any coincidence that that is around the time that Mr.
9 Monahan incorporated Honest Reviews?

10 A. No.

11 Q. You say he immediately complied with this request.
12 This occurred well before the postings on the
13 honestmattressreviews.com website involved in this case.

14 You stand by that today as well?

15 A. Yes.

16 Q. Were there other times that you discovered Mr. Monahan
17 had used that title? When you discovered in October of 2016
18 he had been using that title, did you learn that he had used
19 it on things other than Twitter and LinkedIn?

20 A. At that time or subsequent to that time?

21 Q. Let's start with that time.

22 A. I believe we had learned that he used it in I believe
23 some speech he gave.

24 Q. When did you learn that?

25 A. I think about the same time.

1 Q. Okay. Did you subsequently learn that he had used that
2 title on e-mails?

3 A. I did.

4 Q. When did you learn that?

5 A. I think it was maybe a little bit after that, around
6 that time, but I am not totally clear.

7 Q. Around October of 2016?

8 A. Plus or minus.

9 Q. Let me show you Exhibit 48.

10 This is an e-mail exchange. I will blow up the top of
11 this. Mr. Monahan up at the top is sending an e-mail to
12 somebody named Sherry Bullock and copying Dennis Manning.
13 This is August 23rd, 2016.

14 Are you with me?

15 A. Yes, sir.

16 Q. All right. Who is Dennis Manning?

17 A. Dennis is our customer service manager.

18 Q. He is a GhostBed employee?

19 A. Yes.

20 Q. In August of 2016 did Mr. Manning ever come to you and
21 say to you, oh, my gosh, I just found out that Mr. Monahan
22 is using this phrase chief brand officer, I am surprised and
23 I think it is inappropriate?

24 A. He did not. Dennis deals with thousands and thousands
25 of interactions. He did not.

1 Q. Clearly Mr. Monahan is here using the chief brand
2 officer title; is that correct?

3 A. I see that, yes.

4 Q. Okay. Were you consulted in any way in advance about
5 Mr. Monahan using the term chief brand officer?

6 A. No.

7 Q. Did you ever --

8 A. Not that I recall.

9 Q. Not that you recall. Did you ever give him permission
10 to use it?

11 A. Not that I recall.

12 Q. Were you upset when you learned that he had used it?

13 A. I was bothered, yes.

14 Q. Tell us why you were bothered.

15 A. Because he is not the chief brand officer.

16 Q. What was your concern?

17 A. He is just not the chief brand officer.

18 Q. Were you worried that that would reflect badly on the
19 company or something like that?

20 A. Just that he was not the chief brand officer.

21 Q. Let me show you an exhibit that we looked at earlier
22 today. It is Exhibit 195. It is a spreadsheet. It is kind
23 of hard to read. I am going to pull it up here.

24 Are you aware of an Achieve system by which notice is
25 provided of posts or comments in relation to the Honest

1 Mattress Reviews website?

2 A. No.

3 Q. You are not aware of that?

4 A. No.

5 Q. Just so that you can see what we saw earlier today,
6 under subject or title it says --

7 MR. HORWITZ: Objection, Your Honor. If this
8 witness has no knowledge of this, why are we just pointing
9 out things to him?

10 MR. MAGLEBY: Your Honor, it is going to become so
11 relevant if you give me five minutes.

12 THE COURT: Overruled.

13 BY MR. MAGLEBY

14 Q. Here, Mr. Werner, the subject or title says Steve
15 Herger commented on a link Honest Mattress Reviews shared,
16 and then it says sender or created by Facebook, and then it
17 says recipient in the to line, and Ryan Monahan and Achieve
18 Agency. Then I am going to take you over a little further
19 and blow it up. Then it has a sent date, and in this case
20 it is October 20th, 2016, a summary, and then recipients in
21 the c.c line. Down here under recipients in the c.c. line
22 right here it has Ashley Werner.

23 That is your daughter; is that right?

24 A. That is correct.

25 Q. It also has Alan Hirschhorn at Nature's Sleep. Is Mr.

1 Hirschhorn an employee of Nature's Sleep?

2 A. Yes.

3 Q. Having walked through this, does any of this refresh
4 your recollection as to whether you would receive e-mails
5 through the Achieve system on various topics?

6 A. I don't really understand the question. Is the
7 question do I receive e-mails from people from Achieve?

8 A. Yes.

9 Q. Let's start there.

10 A. Yes, I receive e-mails from people from Achieve Agency.

11 Q. Now, are you aware that we asked GhostBed to produce
12 all e-mails where Mr. Monahan used the term chief brand
13 officer?

14 A. Yes.

15 Q. Are you aware that you have refused to produce them?

16 A. I am not aware of that either way.

17 MR. HORWITZ: Your Honor, we have produced them.

18 THE WITNESS: I thought we gave a lot of
19 documents.

20 BY MR. MAGLEBY

21 Q. You did.

22 A. A lot of documents.

23 Q. All right. What I'm going to do is I am going to take
24 us to the original spreadsheet that comprised Exhibit 195.

25 It is a big document. Again, it is in the folder. I want

1 to direct your attention, sir, on the screen and we have
2 sender or created by Ryan Monahan. The recipient in the to
3 line is Marc Werner. If I tweedle over just a little bit,
4 the sent date is December 7, 2015.

5 Do you see that?

6 A. Yes.

7 Q. All right. Then I'm going to go over a little further.
8 There is a discussion there and it says I would recommend
9 chief creative officer for Ashley, Ryan Monahan, social
10 media strategist, and underneath that it says Marc Werner on
11 December 7, 2015, Marc at Nature's Sleep wrote I like chief
12 brand officer. What do you think we should call Ashley?

13 Mr. Werner, aren't you there referring to using the
14 title chief brand officer by Mr. Monahan?

15 A. I don't recall this document. I'm sorry.

16 Q. All right. Do you have a reason to believe that this
17 document from Achieve is not accurate?

18 A. I have never seen this document before. I don't know
19 anything about this document.

20 Q. Does this refresh your recollection in any way that in
21 December of 2015 you were engaged in communications with Mr.
22 Monahan about him using the title chief brand officer?

23 A. It really doesn't.

24 Q. All right.

25 A. Again, I have never seen this document before. It is a

1 long spreadsheet, so I don't know what it is.

2 Q. Let me ask this. Is your e-mail [REDACTED]?

3 A. It is.

4 Q. Was that your e-mail in December of 2015?

5 A. That was my e-mail at that point in time, but anything
6 below it, I don't know where that is coming from. This does
7 not look like an e-mail to me. This looks like a
8 spreadsheet.

9 Q. If you had produced it, if GhostBed had produced all
10 documents with the phrase chief brand officer, and you had
11 sent this e-mail, if you had actually sent this e-mail --
12 strike that.

13 If you had actually sent this e-mail, would you have
14 been able to find it in your system?

15 A. I would think -- we have turned over our systems to our
16 lawyers to go through and do all the searching stuff and
17 provide all of the information to you guys.

18 Q. Did you hold anything back from your lawyers?

19 A. Not that I know of. We turned over our complete
20 system.

21 Q. Have you deleted or destroyed e-mails from about
22 December 7, 2017?

23 A. Did I --

24 Q. To your knowledge has --

25 A. To my knowledge?

1 Q. -- Nature's Sleep or GhostBed deleted or destroyed
2 e-mails?

3 A. Not to my knowledge, but in the ordinary course, you
4 might delete an e-mail the day you get it because it is
5 irrelevant. But other than that, no.

6 Q. Let's go up a little further.

7 I want to go to 1802. This is message 1802 in the
8 spreadsheet. The last one was line 1848. I want to roll
9 over here. I have the wrong one.

10 1803. I apologize to everyone. 1803. At the bottom
11 of the page, again, do you see that the sender was Ryan
12 Monahan? Do you see the recipient was [REDACTED]?
13 You told us that was your e-mail in December of 2015,
14 correct?

15 A. It was, but I don't see the date on whatever you're
16 showing me here.

17 Q. Good news. I found it. It is under sent. December 7,
18 2015, the same day as the prior entry under line 1848,
19 right?

20 MR. HORWITZ: Your Honor, we have the paper copy
21 here. Could Mr. Magleby refer to what page it is on the
22 paper copy so we know exactly what we're dealing with?

23 MR. MAGLEBY: It is not on the paper copy because
24 Adam Alba, my trusty associate, found it this morning during
25 the examination. It is on the electronic copy of the

1 spreadsheet which should be in the binders under tab 195-A.

2 MR. HORWITZ: 195-A. I don't have a tab 195-A.

3 MR. MAGLEBY: I am informed that my paralegal has
4 not provided the spreadsheet. I will have him run it down.

5 BY MR. MAGLEBY

6 Q. Let's go over to the summary line though. Mr. Monahan
7 writes, hey, Marc, this is the image I use for tech related
8 publications. I size it down so it will drop right into the
9 little circles. Again, I'm honored to be a part of this.

10 For a title I was thinking chief brand officer, digital
11 marketing engineer and so on.

12 Do you see that?

13 A. Yes.

14 Q. Is this an e-mail or a text that preceded the one we
15 just looked at where you said I like chief brand officer?

16 A. I don't know. I don't have the sequencing.

17 Q. Are you still going to stand by your declaration under
18 oath today that you never gave or never knew Mr. Monahan was
19 going to use the title chief brand officer?

20 A. I don't recall that.

21 Q. Let's take a look at Exhibit 165. I will represent to
22 you, sir, that this is a chart that was produced by your
23 lawyers in this case.

24 Have you seen this before?

25 A. Yes.

1 MR. MAGLEBY: Let me pause there, Your Honor.

2 I have been reminded that my paralegal did include
3 it and it was in our box, so we have now passed out the disk
4 with that spreadsheet. I am just going to put a copy up
5 here that can be marked as 195-A later.

6 THE COURT: You can just do it later.

7 MR. MAGLEBY: Yes.

8 Shame on me for blaming my staff. They are
9 usually ahead of me.

10 BY MR. MAGLEBY

11 Q. Mr. Werner, what is this chart?

12 A. This looks like kind of an org operations chart.

13 Q. The title of the P.D.F. that was sent by your lawyers
14 was Werner Media Company organizational chart.

15 Can you tell from looking at this if that is accurate
16 or is this something else?

17 A. The title or the chart?

18 Q. Is the chart Werner Media Company or is this GhostBed
19 or is it something else?

20 A. Werner Media is the legal entity. GhostBed is a
21 subsidiary.

22 Q. Okay.

23 A. Nature's Sleep is a d/b/a. It operates as one in all,
24 so Nature's Sleep is a wholesale business selling to Sears
25 and people like that, not to get, you know, too wordy here,

1 but just to explain, and GhostBed is direct to the consumer.
2 We are a small business, a family business, so we have
3 people wearing multiple hats.

4 Q. Fair enough. In terms of the organizational structure
5 that relates to GhostBed, this is it then?

6 A. These people would be active, yes.

7 Q. If we go to the top we have you as the C.E.O., Donna
8 Werner -- is that your spouse?

9 A. That is my wife.

10 Q. She is the C.A.O. Then the social media manager is
11 Ashley Werner. That is your daughter; is that correct?

12 A. That is correct.

13 Q. If we go down here we see Dennis Manning. That is the
14 gentleman we just saw on the e-mail that Mr. Monahan
15 e-mailed using the chief brand officer title, right?

16 A. Correct.

17 Q. And he is still with the company?

18 A. Dennis?

19 Q. Yes.

20 A. Yes.

21 Q. Then if we go down here, there is a gentleman named
22 Shaquel Lane. Does he sometimes go by Shaq?

23 A. He does.

24 Q. Is he still with the company?

25 A. He is.

1 Q. So GhostBed is a relatively small organization, about
2 30, 40 people; is that right?

3 A. That is correct.

4 Q. Do you work in close proximity to each other?

5 A. Pretty much.

6 Q. Have you ever talked about Purple mattress or the
7 Purple mattress powder while you are at GhostBed in this
8 office with these 30 or 40 people?

9 A. I have explained to our people, as Dennis explains in
10 his weekly meetings, that we don't want to talk about
11 competitors. We want to stay very focused on talking about
12 GhostBed.

13 Q. Have you ever talked about the Purple powder to your
14 employees?

15 A. I have only said that we are not to discuss anything
16 about the Purple powder to anybody.

17 Q. Let me show you Exhibit 102. This is a Facebook post
18 which has been produced in this case. It starts out and it
19 says I connected to live chat at GhostBed and told the
20 customer service agent, Shaq, that I was curious about the
21 softness level of their bed because I have extremely bad
22 back pain. Then it goes on.

23 Have you seen this before?

24 A. I might have seen it in some of the documents.

25 Q. In relation to this case?

1 A. Yes.

2 Q. It goes on to say that I told him that the online
3 reviews that I had read recommended the Purple mattress and
4 that is when he told me that Purple was causing people to
5 acquire lung cancer and cough blood.

6 Do you see that?

7 A. Yes.

8 Q. When you saw this in relation to this case, did you go
9 talk to Shag, the gentleman we just saw in the org chart?

10 A. I had multiple meetings with a number of people.

11 Q. In those meetings did you tell them they couldn't say
12 that Purple mattress caused people to acquire lung cancer
13 and cough blood?

14 A. Absolutely.

15 Q. Did you ever get to the bottom of where they got this
16 idea?

17 A. I never got to the bottom of where they got it other
18 than this gentleman, Shaq, was with us for about a week and
19 he indicated that he had just done some research on the
20 industry to try to be informative in his customer service
21 role, and he didn't realize our policy that we do not talk
22 about competitors on any level. We just want to talk about
23 our product, the GhostBed.

24 Q. Did you do any research to find out if Shaq had said
25 these things to more than one person?

1 MR. HORWITZ: Your Honor, objection. What
2 relevance does this have to the relationship between Mr.
3 Monahan and GhostBed?

4 THE COURT: Good objection.

5 How do you respond to it?

6 MR. MAGLEBY: Give me about five minutes' worth of
7 questions and I will show you.

8 THE COURT: Just tell me.

9 MR. MAGLEBY: Well, I hate to do that with the
10 witness on the stand, Your Honor.

11 THE COURT: Go ahead. I will give you five
12 minutes.

13 MR. MAGLEBY: This ties to the corporate strategy
14 and --

15 THE COURT: Let me hear a question.

16 Go ahead.

17 BY MR. MAGLEBY

18 Q. The thing you tell people is we are not going to talk
19 about our competitors?

20 A. That is our policy. That has been my policy for the
21 past 15 years.

22 Q. Let me put up Exhibit 104. It is a capture of a chat
23 on the GhostBed website.

24 Do you recognize this as the GhostBed website?

25 A. I do.

1 Q. Do you recognize this box in the bottom right-hand
2 corner as a chat box that will pop up if a consumer is
3 asking questions?

4 A. I do.

5 Q. This one starts out with, Shaq, hi. Thanks for
6 contacting GhostBed. Is that the same Shaq we have been
7 talking about?

8 A. I believe so.

9 Q. Let's go down a couple of pages in this chat to page
10 105. The person writes I have also been looking at the
11 Purple mattress. How are you two differentiated?

12 Do you see that reference?

13 A. I do.

14 Q. By the way, have you seen this before, this document?

15 A. Which document?

16 Q. Exhibit 104 and these chats.

17 A. Yes.

18 Q. Go to the next page. Shaq writes, well, I know we
19 offer a better warranty and trail -- I think he means trial
20 period -- as well as we are one and a half inches thicker,
21 but they use baby powder in their mattress, which is now
22 popping up as a hazard. We do not use any type of chemicals
23 at all.

24 Do you have any idea how Mr. -- I am just going to call
25 him Shaq -- came up with the concept that Purple was using

1 baby powder?

2 A. My understanding is, again, he did some homework and
3 there are numerous entries of this around the internet.

4 Q. All right.

5 A. This relates to the same thing as your prior exhibit
6 with that Facebook person, from what I can tell here.

7 Q. Do you know if Shaq got the idea from the Honest
8 Mattress Reviews website?

9 A. I have no idea.

10 Q. You didn't ask him?

11 MR. HORWITZ: Your Honor, it has been five minutes
12 and I am at a loss to figure out what this has to do --

13 THE COURT: Well, that last question went directly
14 to it. He asked if he had any understanding if it came from
15 Honest Mattress Reviews. That shows a connection. That is
16 why we are here today.

17 MR. HORWITZ: It shows, Your Honor, that he read
18 Honest Mattress Reviews.

19 THE COURT: I don't need your explanation of what
20 it shows. The question asked if he knew if it came from
21 Honest Mattress Reviews. That is certainly pertinent to why
22 we are here today.

23 MR. HORWITZ: Thank you, Your Honor.

24 THE COURT: We heard the answer, so I think Mr.
25 Magleby was at least trying to keep it limited to what I

1 wanted it limited to today.

2 Let's hear your next question.

3 MR. MAGLEBY: Sure.

4 BY MR. MAGLEBY

5 Q. If I go to the next page, which is 104.7, Shaq writes
6 small traces of baby powder which can cause cancer, I
7 promise I am not trying to bash them or be biased, and you
8 can maybe find the article online.

9 Did you ever ask Shaq if the article he was referring
10 to was on the Honest Mattress Reviews website?

11 A. My understanding is that he looked at a review from
12 Sleepopolis from Derek Hales, and he has a video on it and
13 he refers to talcum baby powder on the mattress.

14 Q. Did you and Mr. Monahan ever discuss that Monahan could
15 put up negative comments about Purple, and then GhostBed
16 could direct customers to the site, rather than have
17 GhostBed make negative comments directly to customers?

18 A. No.

19 Q. Let's go to 104.8. Shaq writes, and this is a
20 continuation of the prior chat, but our managers had to
21 inform us to let you guys know if asked.

22 Are you management at GhostBed?

23 A. I am management, but no management authorized that
24 whatsoever.

25 Q. So Shaq was basically just lying when he posted this;

1 is that right?

2 A. Shaq was a brand new, inexperienced person just
3 responding on his own volition.

4 Q. So was it ever a corporate strategy to have Honest
5 Mattress Reviews post reviews and then GhostBed could link
6 to those reviews and direct consumers there to see favorable
7 reviews of GhostBed or reviews that were better than Purple?

8 A. Never.

9 Q. Did it ever happen that GhostBed was linked to Honest
10 Mattress Reviews' site and reviews?

11 A. We have ads we run on Facebook that might have
12 different links to probably eight or ten or 12 different
13 mattress review sites. They might be one of ten different
14 sites.

15 Q. Let's take a look at Exhibit 246.

16 MR. MAGLEBY: This, I will represent to the Court,
17 is the August 15th, 2016 GhostBed website from the Wayback
18 Machine.

19 BY MR. MAGLEBY

20 Q. You can see up here in the top left-hand corner 15
21 August, 2016.

22 Let me just ask you, sir, does this look familiar?

23 A. It looks reasonably familiar.

24 Q. If you are in the market for a new mattress, here is a
25 comparison of the features and benefits of GhostBed versus

1 the Purple mattress. Would you be surprised if there are
2 links below that direct the user to the H.M.R. website?

3 A. No. There are links for probably a half a dozen
4 different review sites.

5 Q. The H.M.R. website went up on or about August 16, 2016,
6 didn't it?

7 A. I don't know when it went up.

8 Q. If we go further down on the page, there is a
9 third-party comparison, and can we see any links directing
10 consumers to Honest Mattress Reviews?

11 A. The second one.

12 Q. And also the fifth one; is that right?

13 A. Yes.

14 Q. How did you learn so quickly, within a day or two days
15 of the Honest Mattress Review site going up, how did you
16 learn so quickly that there were reviews on there of
17 GhostBed that you could link to?

18 A. I don't know. I don't know if the Wayback Machine is
19 the right date or the right time period. I just don't know.

20 Q. Did you know that Ryan Monahan was going to put up a
21 mattress review site in August of 2016?

22 A. Did I know he was going to put up a --

23 Q. Mattress review site.

24 A. No.

25 Q. So if this got put up within a day or two of him

1 launching the site, it had nothing to do with Mr. Monahan
2 telling you? Is that what you're telling us?

3 A. That is correct.

4 Q. Just a coincidence. Okay.

5 Your daughter is Ashley Werner, correct?

6 A. Correct.

7 Q. Let me have you look at a document. It is a review
8 from amazon.com. It is a customer review. It is dated
9 May 19, 2016. The Purple bed, queen. I did not purchase
10 the bed so I cannot comment on the order and delivery. Then
11 it goes on.

12 Have you seen this review before?

13 A. I have.

14 Q. When was the first time you saw this review?

15 A. I don't recall when the first time was.

16 MR. HORWITZ: Excuse me. What exhibit number is
17 this?

18 MR. MAGLEBY: 162.

19 MR. HORWITZ: Thank you.

20 THE WITNESS: I know within this litigation I have
21 seen it, but I don't know when the first time was.

22 BY MR. MAGLEBY

23 Q. Are you familiar with the allegations in this
24 litigation by Purple that this was actually a post by your
25 daughter, Ashley Werner, under a different name?

1 A. Yes.

2 Q. Have you done anything to investigate whether that is
3 true?

4 A. I have investigated that and I looked into it.

5 Q. What was your conclusion?

6 A. What happened was the Purple people were attacking and
7 writing false reviews on Amazon and upsetting my daughter,
8 and at a weak moment she wrote this, and she felt so bad --
9 I never knew about it -- then she took it down the next day.

10 Q. I see.

11 A. She was very upset. She was being attacked.

12 Q. And so her reaction was to write a fake review about
13 Purple's product?

14 A. She made a mistake. She made a mistake and she
15 corrected it right away.

16 Q. Was she disciplined by the company in any way?

17 A. When I found out about it, yes, I told her that is not
18 an acceptable thing for our family or for any of our
19 employees or any behavior whatsoever. She said she was just
20 being attacked and attacked on Facebook by a lot of haters,
21 and she just broke down and she just --

22 Q. She broke down and posted --

23 A. She corrected it. I am proud that she corrected it
24 within a 24-hour period.

25 Q. It didn't have anything to do with the fact that

1 somebody caught her and figured out that she was related to
2 you and posted that?

3 A. No.

4 Q. That was --

5 A. No.

6 Q. That was just a coincidence?

7 A. That is a coincidence.

8 Q. One of the things she wrote in here is with how much
9 bad press Johnson & Johnson is getting lately with all these
10 people getting cancer -- those same statements appeared on
11 the Honest Mattress Reviews site later, didn't they?

12 A. I don't know.

13 Q. Did you or Ms. Ashley Werner or Mr. Monahan ever
14 discuss whether or not the powder on the Purple mattress was
15 baby powder and the same powder as in the Johnson & Johnson
16 lawsuits?

17 A. I don't recall specifically. If it came to our
18 attention from the Sleepopolis review and a few other
19 reviewers that called out the baby powder --

20 Q. We'll move on.

21 Let's talk about your communications with Purple.

22 Actually, let me back up. Sorry. Sorry. Sorry.

23 164. Did there come a time when you and Tony Pearce at
24 Purple exchanged e-mails and had a phone call?

25 A. Yes.

1 Q. Mr. Pearce had asked you to stop the negativity between
2 the companies?

3 A. Yes. I think we had multiple e-mail exchanges. It was
4 extremely pleasant. As soon as I got his letter I called
5 him within an hour and I wanted to resolve any of his
6 questions. I took corrective action. We had a pleasant
7 conversation. He sent a pad for my wife who was in the
8 hospital, a C cushion.

9 I said your guys are being pretty aggressive. He said
10 he would look into it. He said we were. I said I would
11 look into it. We tried to get things resolved. We talked
12 about some other -- just general business stuff. I viewed
13 it as a very positive, upbeat, pleasant conversation.

14 Q. Good. I am glad.

15 This is an e-mail from Tony Pearce to you, May 24,
16 2016, so a few days after that Ashley Werner post that we
17 just looked at, right?

18 A. I don't recall the date of that.

19 Q. I will withdraw that question.

20 This is an e-mail from Tony Pearce to you, May 24,
21 2016, correct?

22 A. Are you asking is this e-mail dated that?

23 Q. Yes.

24 A. Yes, that is the date on that.

25 Q. Mr. Pearce says I hope your cushion arrived and your

1 wife is enjoying it. That is the cushion he sent you after
2 you talked and found out that your wife was in the hospital?

3 A. That is correct.

4 Q. A little bit below, Mr. Pearce writes we just had a
5 loyal customer send us a string of evidence that Ashley
6 Werner, the C.E.O.'s daughter and creative director, is
7 still posting false comments and so on.

8 Was this actually the genesis for Ms. Werner taking
9 down that comment?

10 A. No.

11 Q. It wasn't that you got caught by Purple?

12 A. No.

13 Q. Let's take a look at a different e-mail. 236. Sorry.
14 I need to go a little lower. Actually I kind of screwed up.
15 Here is the bottom of that e-mail that we just looked at.

16 The last thing Mr. --

17 A. You have got me a little confused.

18 Q. Exhibit 236. I am starting, and let me orient you, I
19 am starting here in the middle of the page. Again, sir, it
20 is in the binder if you would like. I will represent to you
21 this -- actually it is a different e-mail. Good point. I
22 thought it was the same.

23 The same day, Tony Pearce, Marc Werner, May 24, 2016,
24 correct?

25 A. The same day as the prior e-mail, yes.

1 Q. What Mr. Pearce writes is meanwhile I just saw a paid
2 ad from GhostBed that says Purple uses used materials which
3 is false, so there is still work to do. I appreciate your
4 attitude about fixing it.

5 Did you respond to Mr. Pearce?

6 A. I don't recall the exact sequence of that. It goes
7 back a year and a half already. But Mr. Pearce asked me --
8 I said what language would you like me to use in the
9 comparative ad? So he provided me the language and we used
10 verbatim the language that he wanted.

11 Q. You respond to Mr. Pearce here and you write I will
12 check on this ad. To the best of my knowledge we don't run
13 any ads with Purple or anyone other than just GhostBed.

14 Isn't that inconsistent with what you just told me one
15 moment ago which is you responded to him about the language?

16 A. No. I am not saying that we don't run comparative ads.
17 We were running comparative ads. That is why he reached out
18 to me.

19 Q. In this e-mail, though, you're saying to the best of my
20 knowledge we don't run any ads with Purple or anyone other
21 than just GhostBed.

22 Was that not true?

23 A. I'm a little confused with your question. I will --

24 Q. Let me re-ask it a simpler way. I will make it simple
25 for you.

1 You say to Tony Pearce on May 24, 2016, quote, to the
2 best of my knowledge we don't run any ads with Purple or
3 anyone other than just GhostBed, end quote.

4 Was that true?

5 A. So we run ads with GhostBed and we might run GhostBed
6 versus Purple, GhostBed versus Casper, GhostBed versus
7 Tempurpedic, other types of players in the space for
8 competitive analysis for consumers.

9 Q. So it wasn't true? What you told Mr. Pearce wasn't
10 true?

11 A. I think it was true, because we used GhostBed as
12 something else, but what I'm trying to answer here is that
13 we are not running a dedicated Purple ad.

14 Q. Okay. In fact, when you say to the best of my
15 knowledge we don't run any ads with Purple, that wasn't true
16 because you had just approved a specific ad relating to
17 Purple, hadn't you?

18 A. I don't recall.

19 Q. Well, let me show you. Let's take a look at Exhibit
20 17. In Exhibit 17 Mr. Monahan e-mails you about a month
21 earlier, April 4, 2016, to you, Marc Werner, subject line
22 Purple, and Mr. Monahan asks so I am asking permission
23 rather than forgiveness here, L.O.L. Can I create a graphic
24 that shows recycled materials versus new materials for
25 Facebook then target Purple mattress users? It's a direct

1 blow at them, but figured I would ask before I get us in
2 trouble.

3 So about a month before you told Mr. Pearce you were
4 not aware of any competitive advertising with Purple, Mr.
5 Monahan asked you about competitive advertising with Purple,
6 didn't he?

7 A. That e-mail is here. I don't know if there was a
8 response or if there was an ad.

9 Q. Do you know if the ad ran?

10 A. I don't know.

11 Q. Do you think Mr. Monahan would run an ad without your
12 permission?

13 A. Well, Mr. Monahan puts ads on the Facebook platform and
14 he runs different ads, and there is a lot of different
15 taglines and photographs and messages.

16 Q. In this particular instance he did ask your permission.
17 Would you have responded to him in the ordinary course and
18 given him your permission or your thumbs down?

19 A. Again, this is a while ago, so I don't really recall,
20 but is there a response from me?

21 Q. Well, I have got something better.

22 Did this ad run shortly after that e-mail exchange?

23 A. It looks like it did.

24 Q. In fact, that is the very same day as the e-mail
25 exchange we just saw, isn't it?

1 A. Yes.

2 Q. Let me show you a pleading in this case. It is Exhibit
3 166. The defendant GhostBed's combined motion to dissolve
4 the temporary restraining order and so on. It was filed at
5 this point in time by attorneys at Christensen & Jensen.

6 Was this a paper filed on behalf of GhostBed?

7 THE COURT: I can take judicial notice of that.

8 Move on.

9 MR. MAGLEBY: Thank you, Your Honor.

10 BY MR. MAGLEBY

11 Q. Let me go to the second page and ask you a question,
12 sir.

13 In the middle of this paragraph GhostBed says, but Mr.
14 Monahan has never and is not now working for GhostBed in
15 connection with any competitive marketing concerning Purple
16 or anyone else. It refers to paragraphs in your
17 declaration.

18 Do you see that?

19 A. I do.

20 Q. Is that true that Mr. Monahan had never worked for
21 GhostBed in connection with any competitive marketing
22 concerning Purple, or do you want to change that in light of
23 the e-mails that we just saw?

24 A. I am still a little confused with the context, but he
25 helped put up ads that are competitive ads that are done in

1 the ordinary course in our industry.

2 Q. And some of them target Purple?

3 A. Some of them target Purple. Some of them target ten or
4 15 other mattress brands.

5 Q. So the statement that Mr. Monahan has never and is not
6 now working for GhostBed in connection with any marketing
7 concerning Purple wasn't true, was it?

8 A. It doesn't appear to be, but I don't know what this
9 document is. I am just seeing a paragraph, so I don't know
10 the context of it.

11 Q. Let's take a look at your declaration and maybe you'll
12 have more insight.

13 Here is your declaration and this is the document we
14 already looked at. Sir, I will take you to paragraph 6.
15 You write GhostBed does not have any affiliation whatsoever
16 with co-defendants Honest Reviews, L.L.C. or Mr. Monahan.

17 You submitted that under oath to this Court, right?

18 A. Yes.

19 Q. But Mr. Monahan does provide services to GhostBed
20 through Achieve, correct?

21 A. Through Achieve. We employ Achieve.

22 Q. You employ Achieve?

23 A. Yes.

24 Q. Were you trying to be clever in your use of the word
25 affiliation with regard to Mr. Monahan, and what you meant

1 was he does not directly work for us?

2 A. I am not trying to be clever whatsoever. I am trying
3 to be accurate. So if you go down a few more paragraphs,
4 what I try to do is spell out the relationship.

5 Q. You have telephone calls with Mr. Monahan? He has your
6 mobile number?

7 A. He what?

8 Q. Does Mr. Monahan have your mobile telephone number?

9 A. Yes, he does.

10 Q. Do you have his mobile telephone number?

11 A. Yes.

12 Q. Do you have telephone calls with him from time to time?

13 A. Yes.

14 Q. I am going to put up a document that was produced by
15 Mr. Monahan in this case that was represented to us to be
16 records of telephone calls between you and Ryan Purple.

17 Let me ask you, is [REDACTED], and the rest of that
18 number, your mobile telephone number?

19 A. Yes, it is.

20 Q. So what we can see here is in --

21 A. Does that mean the whole world knows it now?

22 Q. That is why I didn't say the last four digits. I
23 specifically did not say the last four digits. The exhibit
24 is here. We can redact that if you would like. Certain
25 exhibits are filed under seal anyway as a matter of course,

1 and all that has to happen is that Mr. Monahan designate
2 them as confidential. I promise you, sir, I will not call
3 you.

4 There is a series of phone calls in February and
5 March of 2016, correct?

6 A. Yes.

7 Q. If we go down, there is more in March and April. I'm
8 going to go to the third page. There are more in April.
9 I'm going to go to the fourth page. There is one or two in
10 June and July and one or two in August and one in September.

11 Does the volume of calls go way, way up in October of
12 2016?

13 A. I don't know, but I'm sure when you flip the page I
14 will know.

15 Q. All right. Was there any reason that you would be
16 talking to Mr. Monahan a lot more in October of 2016?

17 A. Our budget started going up and he does the Facebook
18 and that is an important thing, and we were moving into the
19 Christmas selling season, so in October of 2016 we have a
20 promotion for -- the GhostBed birthday is Halloween --

21 Q. Any coincidence that that is when he registered Honest
22 Mattress Reviews, the website?

23 A. No coincidence.

24 Q. If we go to October, though, what we see is the calls
25 do indeed go way, way up, right? All of a sudden there are

1 more calls than before.

2 Would you agree with that?

3 A. I would agree with that. Yes, I would agree with that.

4 Q. Some of these are in the evening. We have 7:00 p.m.
5 here. We have 8:28 p.m. here. We have 7:00 p.m. You would
6 talk to Mr. Monahan after 5:00?

7 A. Yes. I tend to work 70 to 80 hours a week. I often
8 don't get home until about 10:00 at night, so I would
9 sometimes talk to Ryan after the busy day.

10 Q. So in all of these phone calls in October, did it ever
11 come up even once that Mr. Monahan was launching a website
12 called Honest Mattress Reviews which would be reviewing,
13 among other things, GhostBed?

14 A. No.

15 Q. If we go to the next page, which is page 8, we see a
16 whole bunch of calls continuing in October and November of
17 2016; is that correct?

18 A. That is correct.

19 Q. Now, are you aware that Mr. Monahan's discussion of the
20 Purple powder really began in earnest in late January and
21 early February of 2017?

22 A. I'm aware of it from your documents.

23 Q. Okay. So if we look in that time frame, starting on
24 page 12 there is a number of calls in there in maybe the
25 first half of February, do you see those, and some of them

1 are at night, correct?

2 A. Yes.

3 Q. If we go to the next page, there is a whole bunch more
4 calls in February and March of 2017, right?

5 A. Yes.

6 Q. Do you think a mattress review site should be
7 transparent about all of its financial ties with the product
8 manufacturer?

9 A. I do.

10 Q. Do you think a mattress review site should be
11 transparent about all of its personal ties with a product
12 manufacturer?

13 A. I think there should be disclosures.

14 Q. Do you agree that for a consumer, having more truthful
15 information is better than having less?

16 MR. HORWITZ: Objection, Your Honor. This was not
17 allowed for Mr. Monahan and it is certainly not relevant to
18 Mr. Werner, and it is not relevant to the issue that we're
19 supposed to be here for.

20 THE COURT: Well, it is in.

21 Go on with your next question.

22 BY MR. MAGLEBY

23 Q. Would you have any objection to Mr. Monahan making a
24 statement on Honest Mattress Reviews to the effect that
25 GhostBed is paying \$10,000 a month to Achieve, which then

1 gets paid to Mr. Monahan's company, Social Media Sharks?

2 MR. HORWITZ: Your Honor, same objection. This is
3 a hypothetical question to a fact witness and not relevant.

4 THE COURT: I will sustain the objection.

5 MR. MAGLEBY: Your Honor, I would say that it is
6 relevant to, first of all, the bias, and, second of all, to
7 the irreparable harm. If he does not think that that is a
8 problem, that it weighs in our --

9 THE COURT: I understand why you're asking it.

10 The objection is sustained.

11 MR. MAGLEBY: Understood.

12 THE WITNESS: Does that mean I don't answer?

13 BY MR. MAGLEBY

14 Q. That means you do not answer my question, sir.

15 MR. MAGLEBY: Your Honor, can I ask questions
16 going to the issue then of whether or not GhostBed would
17 suffer any irreparable harm because of an injunction or
18 should I move on?

19 THE COURT: Move on. That will be briefed and
20 argued I think by all of you.

21 BY MR. MAGLEBY

22 Q. Casper is the leader of the bed in the box industry or
23 at least it was at one point.

24 Do you agree with that?

25 A. They are definitely one of the top players.

1 Q. You have heard of Casper the Friendly Ghost?

2 A. I have heard of that.

3 Q. All right. Does the fact that you named your company
4 GhostBed have anything to do with Casper the Friendly Ghost
5 and maybe some relationship that consumers might draw
6 between GhostBed and Casper?

7 A. Not at all. GhostBed was named because I was afraid of
8 ghosts under my bed as a little kid. It is a name I have
9 had in my inventory for many, many years.

10 MR. MAGLEBY: No further questions.

11 MR. HORWITZ: Your Honor, I have got quite a bit.
12 Can we just take a five-minute break before I start?

13 THE COURT: Okay. Do you need more than five
14 minutes? Do you need ten?

15 MR. HORWITZ: No. Honestly, Your Honor, I just
16 need to go to the men's room.

17 MR. MAGLEBY: So Mr. Horwitz does not feel alone,
18 so do I.

19 THE COURT: Let's take a ten-minute recess.

20 MR. HORWITZ: Your Honor, what is your plan in
21 terms of a lunch break?

22 THE COURT: Well, I wanted to see how far along we
23 were. What do you think?

24 MR. HORWITZ: I have got probably about an hour
25 with Mr. Werner.

1 THE COURT: An hour? You do know that his
2 declaration served as the direct?

3 MR. HORWITZ: Yes, Your Honor.

4 THE COURT: I am going to be a little less
5 indulgent with your leading questions. I don't think that
6 you asked a single non-leading question of the last witness.

7 MR. HORWITZ: Your Honor --

8 THE COURT: This is certainly affiliated with you,
9 so an hour seems like a lot, but we're back to the timing
10 issue.

11 What would you anticipate after that?

12 MR. MAGLEBY: Your Honor, I have to admit I have
13 fired all my guns. It will be recross and I'm not sure, but
14 I wouldn't say more than a few minutes.

15 THE COURT: Okay. If you could trim that hour
16 down to something less than that -- what is your preference?
17 Is it 12:30? That clock is in a bad spot. The light is
18 right on it. Is it 11:30 or 12:30? What is your
19 preference? Do you want to take a short lunch break now?

20 MR. MAGLEBY: It is totally up to the Court, and
21 the court reporter is the one who -- I think is the one who
22 is under the most physically demanding part of the job.
23 We'll go on or we'll take a break.

24 THE COURT: Well, that was just trying to curry
25 favor.

1 MR. MAGLEBY: I'm not dumb.

2 MR. HORWITZ: Whatever Your Honor wants.

3 THE COURT: Let me consult with Ed and when we
4 come back in, we'll map out the rest of the plan. It sounds
5 like we're going to get done today at least, early or mid
6 afternoon sometime.

7 Court is in recess for ten minutes.

8 (Recess)

9 THE COURT: Mr. Werner, you're still under oath.

10 THE WITNESS: Thank you.

11 THE COURT: Mr. Horwitz, if you are ready to
12 proceed, let's start.

13 MR. HORWITZ: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. HORWITZ

16 Q. I'm going to refer you to Exhibit 1 in the white book
17 which is your declaration. Mr. Magleby pointed out on page
18 1 of your declaration paragraph 6, correct?

19 A. Yes.

20 Q. It said there that GhostBed does not have any
21 affiliation whatsoever with the co-defendants Honest
22 Reviews, L.L.C. or Mr. Monahan.

23 A. Correct.

24 Q. You mentioned that later in the declaration that you
25 had more information?

1 A. Yes.

2 Q. Would that be paragraph 12?

3 A. Yes.

4 Q. Could you read that to the Court?

5 THE COURT: I have it.

6 MR. HORWITZ: Okay.

7 BY MR. HORWITZ

8 Q. Did you explain in paragraph 12 exactly what the
9 relationship was?

10 THE COURT: That is a leading question.

11 MR. HORWITZ: Okay.

12 THE COURT: I have it in front of me. I knew that
13 is what he meant earlier.

14 MR. HORWITZ: Thank you, Your Honor.

15 BY MR. HORWITZ

16 Q. I want to go a bit into the background. Can you
17 explain what Nature's Sleep is and what GhostBed is and the
18 difference between them and why you have two companies
19 selling mattresses?

20 A. Sure. I started Nature's Sleep 15 plus years ago to
21 sell memory foam mattresses, toppers and pillows, dog beds,
22 slippers, et cetera, to the wholesale -- is the mike okay --
23 to the wholesale trade.

24 Q. Who do you sell to?

25 A. People like Sears and Kohl's or Amazon, furniture

1 stores, it could be mattress firms, Mattress Giants, Rooms
2 To Go, across the country for brick-and-mortar guys. We
3 sell the product to them under our various brands or
4 sometimes private label, and then they resell the product
5 either direct to consumers that walk in or --

6 THE COURT: I see no relevance to this.

7 MR. HORWITZ: Your Honor, I think the background
8 of understanding what the companies were all about --

9 THE COURT: I understand it as much as I need to
10 today.

11 MR. HORWITZ: Okay.

12 THE COURT: Let's go to the purpose we're here
13 for.

14 MR. HORWITZ: Right.

15 THE COURT: Please.

16 BY MR. HORWITZ

17 Q. How large is GhostBed and Nature's Sleep? How many
18 employees do you have?

19 THE COURT: We have heard that.

20 Go ahead.

21 THE WITNESS: 35 plus.

22 BY MR. HORWITZ

23 Q. Is that a large number for the amount of sales that you
24 have?

25 A. No.

1 Q. What do you do to get the job done?

2 A. When we started the business the whole concept was
3 outsourcing.

4 Q. Okay.

5 A. We created a partnership with FedEx. We use their
6 warehouses around the country, eight of them, their shipping
7 logistics people, their packaging engineering people, and
8 the whole business, because I came from a business with lots
9 of factory and lots of fixed overhead, so when I started
10 this, I wanted to outsource as many things as we could
11 because we didn't have enough capital to hire 50 people and
12 build factories and do those kinds of things. We get a
13 little from this and a little from that.

14 Q. Is one of the things you outsourced was marketing?

15 A. Yes.

16 Q. Who did you outsource it to?

17 A. When we started GhostBed we outsourced -- we had other
18 people prior to that, but we outsourced it to what was
19 called Big Couch Media, and then they merged with a company
20 called Achieve and now it is called Achieve.

21 Q. Who is the team in Big Couch Media or Achieve that
22 worked on your products?

23 A. So the person I met with who was the owner of the
24 company was a woman named Georgianne Brown, who has a lot of
25 experience, and then she has got Cynthia and she has got a

1 whole crew of people. When I first hired them in September
2 of '15, I thought they had like 50 ad people or something
3 like that working for them and then they just assigned
4 different people.

5 What I found out as time went on was that they
6 themselves outsourced a lot of the tasks for different
7 things. So if you need someone to be a copywriter, they
8 have got a copywriter. If you need someone to do graphic
9 arts work, they have got that person. I didn't give that
10 much thought. I was never at their offices.

11 Q. Who was Cynthia Howland?

12 A. Cynthia is like an administrator on the account who
13 makes sure that each person does what they are supposed to
14 do.

15 Q. Has she been described as the team leader?

16 A. She has been described as the team leader. I would
17 probably call her more the team administrator.

18 Q. William Bertolbe?

19 A. William does advertising just for Google, so the Google
20 platform for ads on Google. That is his specialty.

21 Q. And Ryan Monahan?

22 A. His specialty is running ads on Facebook.

23 Q. Michael Sherman?

24 A. Michael does stuff with what they call influencers, to
25 get ahold of bloggers and different kinds of review sites or

1 celebrities and things like that and try to maybe get a
2 product to them and get some kind of a write-up.

3 Q. And there are other people that deal in ad creation?

4 A. There are. They have a number of people in their
5 organization.

6 Q. Is Ryan Monahan in any way the chief marketing officer
7 or chief brand officer either in title or in reality for
8 GhostBed?

9 A. Not at all. His vertical is taking care of Facebook
10 ads. That is his primary role. Georgianne Brown, when I
11 brought her on, I would refer to her as my ad hoc C.M.O.,
12 chief marketing officer, just in conversation. She
13 represents many clients across many sectors.

14 Q. I am going to hand you what has been marked as Exhibit
15 701.

16 Is that an e-mail from Calisha Anderson to a number of
17 people including yourself?

18 A. Yes.

19 Q. In that e-mail does Ms. Anderson state that Cynthia is
20 the team lead on the Achieve side?

21 A. Yes.

22 Q. If you look further down at the second e-mail it says,
23 hi, Calisha. In looking at the sheet I think it would be
24 useful if you populated the sheet with the people directly
25 responsible for tasks.

1 A. Yes, I see that.

2 Q. Did Ms. Anderson do that on a regular basis, identify
3 who was doing what and what tasks were out there?

4 A. Yes, she did. That was her role as director of
5 marketing.

6 Q. I am going to hand you a document marked as Exhibit
7 703.

8 Who prepared this document?

9 A. This was prepared by Calisha, director of marketing.

10 Q. Does it describe the various aspects of marketing for
11 GhostBed?

12 A. Yes. It pretty much lays everything out, the
13 campaigns, the different advertising venues, the strategy,
14 who we're working with, what we expect on deliverables.

15 Q. I'm looking down there and in social, Facebook, it says
16 Ryan. Is that Ryan Monahan?

17 A. Yes.

18 Q. Then on page, search, it ways William and Ryan and
19 Marc. Is Ryan Ryan Monahan?

20 A. Yes.

21 Q. And then in website, organic customer, engagement and
22 content, is that Ryan? At the end it ways Calisha, David,
23 Valeria and Ryan?

24 A. Yes. He is just in parens there.

25 Q. Then if you look at marketing, e-mail, active

1 campaigns, it is Ryan and David?

2 A. Yes.

3 Q. Again, that is Ryan Monahan?

4 A. Ryan Monahan and David our webmaster.

5 Q. So those are the kinds of things that he worked on?

6 A. Yes.

7 Q. He was not in charge of marketing?

8 A. Not at all.

9 Q. In fact, he was not involved in many aspects of
10 marketing?

11 A. Correct.

12 Q. Calisha would be Calisha Anderson?

13 A. Yes.

14 Q. In fact, I see very few areas where she is not involved.

15 A. Well, she is the director of marketing so she is
16 responsible for everything.

17 Q. Now, with Ryan Monahan, did you look into his
18 background or learn about his background in terms of his
19 work with Facebook?

20 A. No. I met him through Big Couch that became Achieve.

21 Q. Did you since learn about this background?

22 A. Having worked with him, I found out that he is very
23 talented on the Facebook ad side.

24 Q. Do you know of any other clients that he has?

25 A. I know he has other mattress clients and I know that he

1 has a number of clients that are involved with the Shark
2 Tank. I have seen him in pictures with some of the sharks,
3 and a number of high profile accounts, but he does not
4 discuss his clients just like I don't want my business
5 discussed.

6 Q. He is not by any means unidimensional in working only
7 for GhostBed?

8 A. Not at all. Not at all.

9 Q. Now, Honest Mattress Reviews, do you read it?

10 A. I read it from time to time.

11 Q. Do you have any advance notice of what is going to get
12 printed there?

13 A. Never.

14 Q. Does he discuss with you possible ideas for articles?

15 A. Never.

16 Q. Do others in the industry read it?

17 A. It has become kind of the new go-to trade journal,
18 digital trade journal in the industry. I have been in the
19 industry for a long time so I have a lot of friends on the
20 manufacturing side, the retail side, the old-school guys,
21 and they frequently read this now because it is a very good
22 source of information of what is happening in the industry.

23 If it is a deal with Serta, if it is a new mattress
24 from Tempurpedic, if it is a new product type, whatever it
25 is, new technology, he seems to break the news in record

1 time.

2 In fact, the industry trade journal that we have read
3 our whole lives, Furniture Today, and a friend of mine is
4 the senior editor writing mattresses, Dave Perry, and they
5 don't seem to get information out to us, the users of that
6 stuff, as quick as Honest does.

7 Q. When you say other people in the industry look to it,
8 how do you know that?

9 A. I am friends with a lot of guys. It is a very close
10 industry. We have trade association meetings. We have
11 mattress fairs and shows in Vegas and in High Point, North
12 Carolina. All the guys talk. You're all part of the same
13 food chain because you need to get foam and you need to get
14 textiles and there are so many vendors and you interact with
15 these various vendors for making products, so you're talking
16 and this guy is telling you this and that guy is telling you
17 that, and it regularly comes up that people say, hey, I saw
18 this from Honest, this information and that story, and it
19 has become kind of a go-to thing for information. It is a
20 repository.

21 Q. If I understand correctly, people look at this as
22 authoritative in the industry?

23 MR. MAGLEBY: Objection, lack of foundation and
24 calls for speculation, hearsay.

25 THE COURT: Sustained.

1 BY MR. HORWITZ

2 Q. Has anyone told you that they look at it as something
3 that they need to use in their business to understand what
4 the industry is doing?

5 MR. MAGLEBY: Objection, hearsay.

6 THE COURT: Sustained.

7 MR. HORWITZ: Your Honor, I'm looking at state of
8 mind. I'm not looking for the truth of it. I'm looking at
9 people in the industry consider this to be a genuine
10 newspaper not a unidimensional product to attack Purple.

11 THE COURT: Sustained. The objection is
12 sustained.

13 MR. HORWITZ: Thank you.

14 BY MR. HORWITZ

15 Q. I'm going to show you what has been marked as Exhibit
16 704. Are these a sampling of the kinds of articles that can
17 be found on the website Honest Mattress Reviews?

18 A. Yes.

19 Q. Obviously this was taken as a snapshot of one day, but
20 is this typical of the kinds of articles that are there?

21 A. Yes. He has all kinds of articles about mattresses,
22 pillows, sleep positions, retailers and interviews with
23 executives at companies like Mattress Firm, the biggest
24 company out there, on a regular basis.

25 Q. Does he talk about medical issues with respect to

1 mattresses?

2 A. Not really.

3 Q. Well, let's divert for a while. One of the things that
4 you planned on with respect to GhostBed was how it was --
5 can you tell me whether it had any medical aspects to it?

6 A. Well, I mean, better sleep is a healthier thing. It is
7 not a medical device, but by having the right kind of
8 comfort and foams, you're going to sleep better with less
9 pressure and you're going to help a bad back or a bad
10 shoulder.

11 Q. Can you tell me a little bit about your personal
12 experience with that?

13 A. Well, I have had three neck surgeries, so I have been a
14 victim of poor sleep and poor pillows my whole life and that
15 is how I started the whole business to begin with, because I
16 designed --

17 MR. MAGLEBY: Objection, Your Honor, relevance.

18 THE COURT: Sustained.

19 MR. HORWITZ: Your Honor, Mr. Magleby showed a
20 document to the previous witness talking about a business
21 plan, one of which was medical issues, and I wanted Mr.
22 Werner to explain exactly what Mr. Magleby pointed out to
23 the previous witness.

24 THE COURT: The objection is sustained.

25 MR. HORWITZ: Thank you, Your Honor.

1 Your Honor, we previously marked Exhibit 705, and
2 if I could show that to the witness?

3 BY MR. HORWITZ

4 Q. Is that a list of ratings from Honest Mattress Reviews?

5 A. Yes.

6 Q. Can you point out where GhostBed is?

7 A. GhostBed is the third one down from the top.

8 Q. It is rated world class?

9 A. Yes.

10 Q. How many other companies are rated world class?

11 A. It looks like ten or 11.

12 Q. Did you speak to Mr. Monahan about the rating that
13 GhostBed got?

14 A. No.

15 Q. Did you talk to him about whether or not other people
16 deserved that rating?

17 A. No.

18 Q. Did you talk to him about any investment you made in
19 Honest Mattress Reviews and whether this was a proper way to
20 deal with you after that investment?

21 A. No. There is no investment. There is no nothing.

22 Q. I'm going to refer you to the second page of that.

23 Does Nature's Sleep appear rated?

24 A. Yes.

25 Q. What was the rating it got?

1 A. It got a poor rating.

2 Q. Okay. Well, fair or poor?

3 A. According to his scale, fair.

4 Q. Fair?

5 A. Yes.

6 Q. Again, Nature's Sleep and GhostBed are both owned by
7 you?

8 A. They are both owned by us. Nature's Sleep is the
9 wholesale business, so we don't offer returns like GhostBed
10 does, and his scale works on various factors I think that
11 just didn't qualify.

12 Q. Does Honest Mattress Reviews have any articles about
13 GhostBed?

14 A. They have a couple of articles.

15 Q. How many?

16 A. I would say three to five.

17 Q. Out of how many total that are there?

18 A. I have learned that there is like almost 1,000
19 articles.

20 Q. Are those articles favorable?

21 A. I wouldn't call them favorable. I call them more
22 informational.

23 Q. We have seen before an interview of the C.E.O. of
24 Mattress Firm, Ken Murphy.

25 Are you aware of that?

1 A. I am aware of who Ken Murphy is. I did read a few in
2 the series. I thought that was very interesting.

3 Q. How many articles were in the series?

4 A. I think there was maybe eight or ten. It was quite a
5 bit. It was pretty impressive that the guy who runs the
6 largest mattress company in the world, a \$4 billion company,
7 is giving time to a reviewer, because I have not seen any of
8 the other reviewers ever get an interview with a C.E.O.

9 Q. Did Honest Mattress Reviews have any other interviews
10 of heads of companies, mattress companies?

11 A. There were several. There were several that I saw.

12 Q. Is that something that helps sales?

13 A. Helps sales for?

14 Q. Well --

15 A. Probably for Mattress Firm.

16 Q. Yes. That is what I am saying

17 A. Yes, definitely for Mattress Firm.

18 Q. Mr. Murphy would not be doing that if not for the fact
19 that it would help sales?

20 A. I think it is part of his goodwill and getting the word
21 out about Mattress Firm.

22 Q. Can you tell me whether or not it would help GhostBed's
23 sales if you were interviewed?

24 A. It probably would.

25 Q. Were you interviewed?

1 A. No.

2 Q. When did you first meet Mr. Ryan Monahan?

3 A. I met him in about December of 2015.

4 Q. Under what conditions did you meet him?

5 A. Big Couch Media at the time and Georgianne Brown were
6 having a get-together at my office with a bunch of people
7 and she brought over a bunch of her people. Quite frankly,
8 I didn't know who any of them were. I couldn't have
9 repeated their names or identified any of them in a lineup.

10 Q. Is Mr. Monahan a close personal friend?

11 A. I never knew him before this GhostBed and Big Couch and
12 Achieve experience.

13 Q. Is he now a close personal friend?

14 A. I would consider him a friend, yes, definitely. I
15 consider -- most people I work with over time, I become
16 friendly with them. I am just an easygoing and friendly guy
17 and I think it is easier to have good relations.

18 Q. How many times has he been over for dinner?

19 A. Never.

20 Q. How many times has he even been in your house?

21 A. Never. I don't know where he lives. He has never been
22 to my house.

23 Q. Do you normally invite people over to your house for
24 dinner?

25 A. No.

1 Q. Why not?

2 A. Because I work late and I have a sick wife and I enjoy
3 my family time.

4 Q. Is Mr. Monahan an employee of GhostBed?

5 A. No.

6 Q. Is he an officer of GhostBed?

7 A. No.

8 Q. Do you or any of your related companies have any
9 ownership interest in Honest Mattress Reviews?

10 A. Nothing.

11 Q. Do you have any control over the content of Honest
12 Mattress Reviews?

13 A. Nothing.

14 Q. Do you have any idea what is going to be in Honest
15 Mattress Reviews until you see it?

16 A. I have no knowledge of anything.

17 Q. Now, specifically the articles that we're here talking
18 about now, about powder with respect to Purple, when did you
19 know that Honest Mattress Reviews was going to publish
20 articles in any way related to Purple and its powder?

21 A. After I read them.

22 Q. You read them in Honest Mattress Reviews?

23 A. On their website.

24 Q. Did you have anything to do with them?

25 A. Nothing.

1 Q. Did you suggest to Mr. Monahan that this may be an
2 interesting area to go into?

3 A. No.

4 Q. Did you arrange for those articles to be printed?

5 A. No.

6 Q. Did you even suggest to him that it may be something
7 worth investigating?

8 A. No.

9 Q. Now, at some point you became aware that Mr. Monahan
10 was using the title chief brand officer?

11 A. Yes.

12 Q. I'm going to show you Exhibit 708.

13 Do you recognize that letter?

14 A. Yes. This is a letter I got from a lawyer in New York.

15 Q. If you look at the second page at the top, it says --
16 or starting at the bottom of the first page -- specifically
17 we have learned that the domain

18 www.honestmattressreviews.com was purchased in 2016 by Ryan
19 Monahan from Go Daddy, and have further discovered that Ryan
20 Monahan is the chief brand officer for GhostBed and the
21 author of the GhostBed blog which appears at a certain
22 website.

23 A. Yes.

24 Q. Do you see that?

25 A. Yes.

1 Q. Did something happen as a result of your receiving this
2 letter?

3 A. Yes. I became aware of this Honest Review site and
4 that is when I really got into this chief brand officer
5 thing and said that that is not acceptable and had to make
6 that change.

7 Q. Can you tell me whether or not this letter is what
8 prompted you to deal with the issue of Mr. Monahan calling
9 himself the chief brand officer?

10 A. This was the catalyst.

11 Q. This was on October 14 of 2016?

12 A. Yes.

13 Q. It has been suggested that Mr. Monahan hid his
14 ownership of www.honestmattressreviews.com. Did this
15 attorney have any problem figuring that out?

16 MR. MAGLEBY: Objection, speculation.

17 THE COURT: Overruled.

18 THE WITNESS: I can answer?

19 BY MR. HORWITZ

20 Q. Yes.

21 A. I spoke to her. She had no problem whatsoever. She
22 told me directly.

23 Q. So as a result of getting this letter, did you speak to
24 Mr. Monahan about his use of the title chief brand officer?

25 A. Yes.

1 Q. What did you say?

2 A. Lose it.

3 Q. I'm sorry?

4 A. Get rid of it. Don't use it.

5 Q. As far as you know did he comply?

6 A. I believe so. I don't know how long it takes to do --
7 wherever he had it, but yes.

8 Q. Did you look into whether he had an e-mail at
9 ghostbed.com?

10 A. Yes. That was ceased.

11 Q. You stopped that?

12 A. Yes.

13 Q. Now, why did he have an e-mail?

14 A. So as part of his role with the marketing agency, they
15 wanted to improve our e-mail marketing. They didn't think
16 that we were doing it that well, so they suggested a few
17 people in-house that could help. They wanted to change
18 software vendors that actually the e-mails get sent through.
19 In order to set that up, they would only set it up if you
20 have an e-mail extension to the company that it is going to
21 be set up.

22 Q. What do you mean by extension?

23 A. The e-mail has to be john@ghostbed.com. If you have it
24 to the federal courthouse, they won't set it up unless the
25 e-mail account is for the federal courthouse. The e-mail

1 account has to be tied back to what the title is in the
2 e-mail. So we had to give him an e-mail in order to be able
3 to do that at that time.

4 Q. So there had to be an e-mail with the name of the
5 company matching the name of the website?

6 A. Yes. Otherwise other people could just go in there and
7 hack around, so they had these protocols for security.

8 Q. I'm going to show you Exhibit 709.

9 What is this?

10 A. Okay. So I come from a military family and so the
11 military is important to me, and so we wanted to get some
12 campaigns to kind of give back, and so we wanted to set up a
13 campaign for the military. There are software sites out
14 there that can help run your contests, send out information,
15 keep track of things, and it is all automated so you don't
16 have to do it manually.

17 So at Achieve Ryan was given the task just to set that
18 up, again, with the same e-mail. You needed that same
19 e-mail address in order to set it up. So his job was to set
20 this up with the software company.

21 Q. Now, if you look at the second page, under 13 it has to
22 request the name of the contest winner send either a
23 self-addressed stamped envelope to the address, attention
24 Ryan Monahan or, B, an e-mail to [REDACTED].

25 A. I think there are some compliance legal rules with a

1 contest that you have to have certain information, and
2 because he was setting it up, he just dropped in that
3 information, and if anything came in, that would just get
4 forwarded over to the appropriate people at the company.

5 Q. Now, your phone people, the people who answer phones,
6 is that outsourced?

7 A. Originally it was outsourced and we were not happy with
8 it so we do it all in-house.

9 Q. Now, there is a recording that was made of a
10 conversation with an investigator of Purple and someone
11 called Jamey. Who is Jamey?

12 A. Jamey's actual name is James. James was a new employee
13 of ours and he was working in what we call a lease to own
14 program which is through Robert Half, which is a staffing
15 firm. So often we bring people on through a staffing firm
16 so we can see how they work out in our environment, and then
17 after 90 or 120 days you can decide to make them an
18 employee. You basically pay Robert Half for their services.

19 Q. Do you have a training manual for people?

20 A. We have a training manual.

21 Q. I'm going to show you Exhibit 711.

22 Can you tell me what that is?

23 A. This is our GhostBed customer service training manual
24 for our staff.

25 Q. I'm going to refer you to page 3. It starts at the top

1 with GhostBed and other competitors, bullet point, there are
2 other customers that sell products like our GhostBed. If
3 asked about other companies and their products, our response
4 is as follows. Quote, I can speak about my GhostBed and how
5 it is constructed. With respect to other companies'
6 products, I would not know their specific details.

7 Another bullet is you may direct the customer to our
8 website. That's the GhostBed website?

9 A. Yes.

10 Q. Has that been in your manual since day one?

11 A. I believe so.

12 Q. And is that communicated to the people who answer the
13 phones?

14 A. It is.

15 Q. So they have been instructed since day one not to talk
16 about other competitors?

17 A. Adamantly.

18 Q. Now, there is another one down there, if asked does
19 your mattress contain powder, and another bullet is do not
20 talk about the competitor or of powder.

21 Do you see that?

22 A. Yes.

23 Q. Was that added?

24 A. Yes.

25 Q. When was it added?

1 A. I would say in the last three to five months. I am not
2 exactly sure, but this is a living document. As things come
3 up, we want to add things so we can get the best practices
4 in place right away.

5 Q. So you have tried your best not to have people discuss
6 Purple or its powder?

7 A. I have tried to do everything and I keep redoing it and
8 redoing it and talk to everyone myself the best I can, and
9 it is discussed every week at their weekly meetings and
10 their staff huddles. I don't want anyone talking about any
11 competitors. Just focus on our products.

12 Q. As you said, the top one has been in the GhostBed
13 manual since well before this issue with Purple?

14 A. Well before.

15 Q. All right. There has also been some discussion about
16 ad copy making fun of Purple.

17 Do you recall that?

18 A. Yes.

19 Q. In the documents?

20 A. Yes.

21 Q. I'm going to show you Exhibit 712.

22 So this is the ad?

23 A. This is the ad.

24 Q. Where was the ad placed?

25 A. This is placed on the Google network, so it is a text

1 ad as opposed to an ad with a photograph.

2 Q. I'm sorry. It is placed where?

3 A. Through the Google ad network. It is anywhere that
4 Google runs ads, so if you do a search for mattress or
5 something, an ad could come up and this might come up.

6 Q. Making fun of Purple was just, quote, our bed is not
7 Purple, L.O.L.?

8 A. We were not trying to make fun of anybody. We were
9 just saying our bed is not Purple.

10 Q. But it had nothing to do with powder?

11 A. It has nothing to do with powder or anything.

12 Q. Do you place other ads that are sort of making fun of
13 other competitors?

14 A. Again, we are not trying to make fun of anyone, but we
15 run other ads that might be focused on lots of other
16 competitors. It is a standard practice. If you do a
17 mattress search, you'll see ad after ad where Casper is
18 doing it to Leesa and Leesa is doing it to Tempurpedic and
19 Serta is doing it to Seely and it just goes on and on and
20 on.

21 Q. I'm going to show you Exhibit 714.

22 Can you tell me what this is?

23 A. It is an e-mail from Ryan to Ashley or from Ashley to
24 Ryan. I can't really tell. We're just talking about
25 comparisons. One of the things we pride -- we developed our

1 logistic system so we can ship our goods in 24 hours,
2 because we feel that the customers -- from Amazon Prime to
3 drive-through McDonald's -- if we are comparing ourselves to
4 other people that take two weeks or three weeks, whatever,
5 we point out to the customers that if you need it right away
6 we ship in 24 hours.

7 Q. Where is that comparison?

8 A. That comparison is I think on our website.

9 Q. I am going to show you Exhibits 715, 716, 717, 718 and
10 719.

11 Can you tell me what those are?

12 A. These are various comparative ads that we have on our
13 website. We must have 15 or 20 plus.

14 Q. These are just examples?

15 A. These are just examples of some of them, yes.

16 Q. Does this talk about -- so Purple is not the only one
17 you have a comparison with?

18 A. We have at least 15 other players in the space. In the
19 space there are 200 players today, 200 players in the bed in
20 a box space.

21 Q. In looking back at Exhibit 714, this was just gathering
22 evidence or gathering information to put in the comparison?

23 A. Yes.

24 Q. Do you gather this for all of your competitors?

25 A. We do. We do. What we try to do is we just point out

1 we're 11 inches and you're 10 inches, you cost 900 and we
2 cost 800. It is those kinds of things. It is just kind of
3 factual pieces of information and let the consumer look and
4 make a decision. Everybody in this space has a generous
5 return policy, so if the customer does not like it they can
6 return it.

7 Q. Now, did there come a time when one of your employees
8 was the subject of domestic abuse?

9 A. Yes.

10 Q. Can you tell me about that?

11 A. It was a horrible thing. One of our computer
12 programmers, Heilyn Pages, was coming to work on
13 September 26, 2016, almost a year ago, and her estranged
14 husband met her in our parking lot around 7:20 a.m. before
15 she came into our front door ten feet away and started to
16 beat on her and then poured gasoline on her and lit her on
17 fire in the car. It was all caught on our video cameras in
18 our retail storefront of our corporate office. It was just
19 a hideous, hideous thing.

20 Q. Was she seriously injured?

21 A. Yes. She almost died. She was in a coma for quite
22 some time. The doctors who I spoke to didn't think she was
23 coming back. So we spoke to her prior employer --

24 Q. Let me show you an exhibit, Exhibit 720.

25 Can you tell me what that is?

1 A. So this is an e-mail -- because we wanted to do one of
2 these GoFundMe pages to help raise money for her.

3 Q. What is a GoFundMe page?

4 A. GoFundMe is just a website, a huge website so when
5 there is crisis for anything, if your dog has a broken leg
6 or you mom is really sick, you can help and just reach out
7 to people's generosity and see if they will help fund your
8 campaign. It is just an organized way of doing it. I was
9 not that familiar with it myself at the time, but we knew we
10 wanted to try to do something to help her because the
11 expenses would be ridiculous.

12 We continued to pay her and help her with her medical
13 and do everything we could. So we found that her prior
14 employer, which is a firm, a large firm in Florida, had
15 already started this GoFundMe. So we communicated with them
16 and we just added a little bit to this GoFundMe page. I
17 actually took that picture off her desk, with her child, to
18 put in here, and then what we tried to then do with it was
19 to try to blast it out on Facebook to as many people as we
20 knew, everyone's friend so we could help and try to raise
21 funds for her.

22 Q. Did Ryan Monahan write this?

23 A. No. Costa Farms wrote it and then I believe I added
24 some language about us.

25 Q. Did Mr. Monahan post this?

1 A. I believe he posted it on his Facebook page. Last I
2 checked there were over 700 different people across the
3 country who also posted it on their Facebook page.

4 Q. Tell me, what does it mean to post something on your
5 Facebook page?

6 A. It means you take something that is kind of on the
7 Facebook page, like this article that is somehow in your
8 feed or you go to the GoFundMe page and there is a little
9 button that says post it on your Facebook page, and then it
10 goes into like your individual Facebook link.

11 Q. If I were to go to your Facebook page or someone else's
12 Facebook page and take any article I could --

13 A. You could re-post it.

14 Q. Is that a common practice?

15 A. It is extremely common. That is why Facebook has got a
16 billion users.

17 Q. How many people re-posted this article --

18 A. Well --

19 Q. -- that you and her prior employer created?

20 A. The last time I saw it, it was over 750 people had
21 re-posted it.

22 Q. And not all of those people were your employees?

23 A. No. No. Most of those people, I have no idea who they
24 are. I only have 35 employees.

25 Q. Did any of your friends re-post it?

1 A. Yes.

2 Q. Did any of your business associates re-post it?

3 A. As many as I could reach out to. Several mattress
4 reviewers re-posted it and made contributions.

5 Q. Did any of employees re-post it?

6 A. I believe so.

7 Q. I'm going to refer you to Exhibit 721.

8 A. If I could just add one more thing, because this was
9 really a horrible thing where a woman was burned on 70
10 percent of her body, she has come back to work in the last
11 month, so it is a very happy ending and we're glad to have
12 her back.

13 Q. Good to hear.

14 Can you tell me what that picture is in Exhibit 721?

15 A. So this is a picture of people that were in our office
16 that day in our showroom for the red nose -- it is a money
17 raiser for a different cause.

18 Q. I happen to not be familiar with it. What is it all
19 about?

20 THE COURT: I don't see the relevance of this.

21 MR. HORWITZ: Well, the plaintiff has claimed that
22 this picture shows that Mr. Monahan is employed by GhostBed.
23 I want to go into what this is and why it is that way and
24 why it has no relevance to the issue.

25 THE COURT: Is Mr. Monahan in this photo?

1 MR. HORWITZ: Yes, Your Honor.

2 THE COURT: Go ahead.

3 BY MR. HORWITZ

4 Q. Okay.

5 A. This was a group of our employees plus outside vendors
6 that were at our premise that day. So we had Josh and Abby
7 from a video production company, and we had Ryan there that
8 day, because he had something to do with the video and the
9 pictures or something like that and he was giving some
10 input, so we just took a group picture. My grandson is in
11 the picture.

12 Q. He is not an employee?

13 A. My grandson is not an employee. He is not --

14 Q. How old is he?

15 A. He was nine months there.

16 Q. Now, Calisha Anderson, what was she hired as?

17 A. She was hired -- originally I was looking for a
18 marketing manager, administrator, and then she asked if she
19 could have a larger title, which would be director of
20 marketing, so I acquiesced to that. Then she wanted to
21 write her own job description, so I said that was a good
22 idea, so she wrote the job description as director of
23 awesomeness. Officially with us it was director of
24 marketing.

25 Q. I'm going to show you Exhibit 722 and 723 and ask if

1 you can identify them for me.

2 A. Do I answer now?

3 Q. Go ahead.

4 A. These are very sensitive documents that relate to our
5 detailed Amazon Media Group or advertising through Amazon.
6 Amazon, besides being an e-commerce place, is like Google.
7 They are a huge advertising company. We have a very active,
8 active relationship with them and obviously spend a lot of
9 money in our nomenclature. This is the detail of the
10 campaigns and how much we're spending by month and by
11 campaign and the results thereof.

12 Q. Is this information confidential?

13 A. It is extremely confidential.

14 Q. Was Ms. Anderson aware that this is confidential?

15 A. Very much so.

16 Q. It bears the production numbers of Anderson 5 and
17 Anderson 217. She produced it. Was she aware that it was
18 confidential?

19 A. Yes.

20 MR. MAGLEBY: Objection, foundation, speculation.

21 THE COURT: Overruled.

22 BY MR. HORWITZ

23 Q. I'm going to show you Exhibit 725.

24 A. Did you want me to answer what the second page was of
25 this first exhibit?

1 Q. I am sorry. That would be a good idea.

2 A. The second page is an overall ad spend from 2016 by
3 advising venue, T.V., radio, C.B.S., you know, all of those
4 different kinds of things, broadcast, et cetera, the system
5 and the amount spent per month, an incredibly sensitive
6 document.

7 Q. I'm going to show you Exhibit 725.

8 Can you identify that?

9 A. Yes. This is an incredibly sensitive document. The
10 first thing is the numbers would tell someone how to do it,
11 and this document, which is actually probably over 600
12 pages, this is obviously an excerpt, would tell you what to
13 do, who to go after. This is a customer segmentation and
14 profiling.

15 What that means is we have taken 12, 15,000 actual
16 addresses of customers who bought from us, and we sent it to
17 a very large firm called Prism, which is like the Nielsen
18 Ratings, and they run it through this grinder and they come
19 out and they tell you that your customer is this and this
20 and this and they fit in these kinds of things, so then you
21 know how to go after them. This is really gold. This is
22 highly, highly sensitive.

23 Q. This was also produced by Ms. Anderson if you look --

24 A. I see that. That is very disturbing.

25 Q. If you were a competitor, would you want these three

1 documents, 722, 723 and 725?

2 A. Well, they would certainly be very helpful for your
3 business, but you obviously accessed it through improper
4 means and you would --

5 Q. I am just asking whether it would be helpful.

6 A. It would be extremely helpful.

7 Q. Was Ms. Anderson aware of the value of this?

8 A. Yes. She is very schooled in -- she has a master's in
9 advertising research and she knows very well what this is.
10 She was involved with me when we did it, the research
11 report, and she was doing sub analysis from this data. It
12 was very detailed, quantitative work on it.

13 Q. Did there ever come a time when you asked Ms. Anderson
14 to put together a vendor list?

15 A. Yes.

16 Q. Can you tell me what that was all about?

17 MR. MAGLEBY: Your Honor, I'm going to object. I
18 don't know how this has anything to do with ties between
19 GhostBed and Mr. Monahan. I have been patient, but I think
20 we're getting far afield.

21 THE COURT: I do, too.

22 MR. HORWITZ: Your Honor, it goes directly to Ms.
23 Anderson's declaration.

24 THE COURT: Objection sustained.

25 Move on.

1 MR. HORWITZ: No further questions, Your Honor.

2 THE COURT: Okay. Thank you.

3 Did you have any questions of this witness?

4 MR. SPERLEIN: No, Your Honor. Thank you.

5 THE COURT: Okay. Mr. Magleby, do you have other
6 questions of Mr. Werner?

7 MR. MAGLEBY: I do.

8 THE COURT: Okay.

9 MR. MAGLEBY: I say that sheepishly.

10 RECROSS-EXAMINATION

11 BY MR. MAGLEBY

12 Q. With regard to Exhibit 721, that was the red nose day
13 at the office, right?

14 A. Yes.

15 Q. So at least on that particular day Mr. Monahan just
16 happened to be around; isn't that correct?

17 A. Well, as I stated earlier in my testimony, we had an
18 outside vendor who does video production, Josh and Abby, and
19 so we asked them to come over because he was involved with
20 something -- looking at something that they were doing.

21 Q. Does Mr. Monahan make those same kinds of visits to any
22 other mattress company?

23 MR. HORWITZ: Objection, Your Honor.

24 BY MR. MAGLEBY

25 Q. Does Mr. Monahan go and make those same kinds of

1 in-person visits to any other mattress company?

2 A. I don't know what visits he makes.

3 Q. All right. Let's take a look at Exhibit 55.

4 A. Is that in this stack?

5 Q. It is in one of the white binders, but I will put it up
6 on the screen for you. This is a post regarding that
7 horrific event with your employee, which I'm very sorry to
8 hear about.

9 This is a different post regarding it. It starts out
10 Cheryl Galster says the following is a letter that was sent
11 to my e-mail that you might be able to respond to in the way
12 that you think will be of help. It goes on and it talks
13 about these events of September 26th, if you can see where
14 my cursor is.

15 You were pretty involved in these posts going out and
16 trying to raise money for this employee, correct?

17 A. I was involved with helping to set up GoFundMe. I'm
18 not active in the Facebook type of reposting.

19 Q. I see. Well, let's just look at the bottom. Can we
20 see who signed this letter that was posted on Facebook?

21 A. It says Ryan.

22 Q. Does it have a title for him?

23 A. It does.

24 Q. What is it?

25 A. Chief brand officer.

1 Q. Does he have an e-mail that says [REDACTED]?

2 A. That is what it says.

3 Q. All right. You were handed Exhibits 712 and 714. One
4 is I guess a text or something that says our bed is not
5 purple. The other one has the subject line versus Purple
6 and it talks about the shipping.

7 Do you recall those two exhibits?

8 A. Yes.

9 Q. Those are in April of 2016; isn't that right? I will
10 give you a moment to find them.

11 A. April of 2016.

12 Q. All right. So at least in those two instances you were
13 doing comparative advertising with regard to Purple,
14 correct?

15 A. This states that that was to be added to it.

16 Q. All right. Let's go back to this e-mail that you sent
17 to Tony Pearce. On May 24, 2016, within a month of those
18 two documents you say to the best of my knowledge we don't
19 run any ads with Purple or anyone other than just GhostBed.

20 That wasn't true, at least with regard to the two
21 exhibit we just looked at, was it?

22 A. Again, you're mischaracterizing it and misunderstanding
23 it.

24 Q. All right.

25 A. I'm saying we're running ads for GhostBed and I was

1 talking to Mr. Pearce specifically about making corrections
2 in the comparative ad we're running with him, and he gave me
3 language to put into that comparative ad.

4 Q. Your position in this case is you don't have anything
5 to do with the H.M.R. website; is that right?

6 A. That being who?

7 Q. You don't have anything to do with the content. Is
8 that your position?

9 A. Are you talking about Honest Mattress Reviews?

10 Q. The H.M.R. website. Sorry. That was the shorthand we
11 got with Mr. Monahan and I realize you were not in the room
12 when we did that.

13 A. No.

14 Q. Boy, you sure talk to a lot of people in the industry
15 about it and that is what you testified to with Mr. Horwitz,
16 right? You talk to people in the industry about this
17 website. It is the new up-and-coming website?

18 A. People refer to this and say did you see this article
19 and so-and-so and I typically say yes or no.

20 Q. Do you ever bring it up to people?

21 A. No.

22 Q. Wow. This is the new up-and-coming website. You
23 should read this.

24 A. No.

25 Q. Never?

1 A. Never is a big word, but not that I recall.

2 Q. So it is the up-and-coming website in the industry and
3 you believe that, but you don't ever mention it to any of
4 your friends in the industry?

5 A. What is the need to? They mention it to me.

6 Q. All right. Let's take a look at Exhibit 207. This is
7 an e-mail, Calisha Anderson to Ryan Monahan, 11-10, '16,
8 7:05 p.m. That is up at the top where my cursor is.

9 Do you see that?

10 A. Ryan's name, yes.

11 Q. Then if we go down a little bit, November 10, 2016,
12 Ryan Monahan is sending an e-mail from the Achieve Agency I
13 guess to Ms. Anderson. He says I want you to be uber
14 successful because then we all are. I am just recommending
15 we work as a team and so on and so forth.

16 Do you see that?

17 A. Yes.

18 Q. If we take a look -- sorry. That is not what I meant
19 to do. If we go down to the bottom we can see that e-mail
20 was produced by GhostBed.

21 Do you see that?

22 A. Yes.

23 Q. By the way, are you familiar with the control number
24 that identifies the party that produces a document?

25 A. No.

1 Q. Let's go back to the spreadsheet, Exhibit 195-A.

2 Sir, earlier I was asking you about this column here
3 which says I like chief brand officer. What do you think we
4 should call Ashley? Am I accurate that you can't tell me
5 one way or another whether that is a real e-mail that was
6 actually sent? You don't know; is that right?

7 A. I don't recall.

8 Q. Let's go down to the e-mail directly below it, right
9 below it. If we look at the date it is 11-10-16, 6:33 p.m.,
10 and if we look over in the summary it says I want you to be
11 uber successful because then we all are. I am just
12 recommending that we work as a team, as that is the only way
13 to transfer knowledge.

14 That is the same language that we saw in this e-mail
15 that was actually produced by GhostBed, isn't it?

16 A. That yellow highlighted copy is in that spreadsheet.

17 Q. Yes. Does that indicate to you that in any way maybe
18 this spreadsheet actually tracks e-mails that go through the
19 Achieve e-mail system?

20 A. Not at all.

21 Q. All right.

22 MR. MAGLEBY: No further questions.

23 Mr. Horwitz, anything further from you?

24 MR. HORWITZ: No, Your Honor.

25 THE COURT: May this witness be excused?

1 MR. MAGLEBY: Again, Your Honor, never say never.
2 I don't anticipate calling him back, but I may.

3 THE COURT: Mr. Werner, we have one more witness
4 on the main program and I think you're probably finished,
5 but there is a possibility that you might be re-called.
6 We're going to ask you to stick around. Your attorney can
7 help you understand what that is all about. You can leave
8 the courtroom now.

9 Thank you.

10 THE WITNESS: Thank you, sir.

11 THE COURT: Ms. Anderson, is she ready to go?

12 MR. MAGLEBY: I believe they are out in the hall.
13 I can go look.

14 THE COURT: Let's take five minutes while you get
15 her in here and then we'll begin with her.

16 I forgot. I consulted with Ed and my people, but
17 I didn't tell you that we decided to just forge on through.

18 MR. MAGLEBY: I guessed --

19 THE COURT: Give me your estimate. How much time
20 do you think you'll be with Ms. Anderson?

21 MR. HORWITZ: Somewhere between an hour and an
22 hour and a half. Not long.

23 THE COURT: Well, that is long. When we get
24 started, it is going to be a quarter to 2:00. I am going to
25 ask you to be done by a quarter to 3:00. That will be one

1 hour on cross-examination.

2 Court is in recess for five minutes.

3 (Recess)

4 THE COURT: Is Ms. Anderson in the room?

5 Please come forward and be sworn in as a witness
6 in this hearing. Thank you.

7 CALISHA ANDERSON

8 Having been duly sworn, was examined
9 and testified as follows:

10 MR. STRASSBERG: Just one thing before she begins.
11 I am Evan Strassberg. I am counsel for this witness.

12 THE COURT: Thank you.

13 MR. MAGLEBY: Your Honor, where would you like Mr.
14 Strassberg? Should I move?

15 THE COURT: Wherever he would like to sit. Inside
16 of the jury box? Okay.

17 Mr. Horwitz, anytime you are ready to proceed, you
18 may begin.

19 THE WITNESS: C-a-l-i-s-h-a, A-n-d-e-r-s-o-n.

20 CROSS-EXAMINATION

21 BY MR. HORWITZ

22 Q. Good afternoon, Ms. Anderson.

23 I am going to show you Exhibit 750 which is your
24 declaration that you filed in this case. Is that the
25 declaration that you filed in this case?

1 A. Yes, sir.

2 Q. Now, in paragraph five it says that I was to report
3 directly to Marc Werner. However, I quickly learned that
4 Ryan Monahan was the one who oversaw marketing.

5 Do you see that?

6 A. Yes, sir.

7 Q. How quickly did you learn that?

8 A. Well, I learned who Ryan was and got an impression of
9 what his influence was probably within the first two or
10 three days. It took probably a couple of weeks before I got
11 the real gravity of it.

12 Q. In paragraph six it says immediately after I was hired
13 my co-workers told me that someone named Ryan, who worked
14 off-site, was in charge of GhostBed's marketing.

15 A. Yes.

16 Q. Do you see that?

17 A. Yes.

18 Q. And immediately is the same thing, within two or three
19 days?

20 A. I would say relatively, yes, within two or three days
21 of me being hired. Yes.

22 Q. If you look at paragraph nine it says, in fact, it
23 became immediately apparent to me after I started that Ryan
24 controlled every aspect of GhostBed's marketing. This
25 continued up until the day I resigned.

1 A. Yes, sir.

2 Q. That is your declaration?

3 A. Yes, sir.

4 Q. And that is correct?

5 A. Yes, sir.

6 Q. Did Mr. Monahan have responsibility for all aspects of
7 marketing or for social media?

8 A. That is kind of a layered question. Can you define
9 responsibility?

10 Q. Well, you were talking about that he oversaw marketing,
11 was in charge of GhostBed's marketing, controlled every
12 aspect of GhostBed's marketing --

13 A. So I would say that the word is not really
14 responsibility. It is really authority. He had authority
15 over the marketing.

16 Q. Over all aspects of marketing?

17 A. Yes. So if you broke down the different branches of
18 the marketing between the social media and the website and
19 Amazon -- social media, website, Amazon and search engine
20 optimization, those were the primary areas -- the primary
21 channels that marketing was distributed, and Ryan was the
22 authoritative figure in all of them except for perhaps
23 Amazon.

24 Q. I'm trying to understand. Was he responsible, was he
25 the authority on all aspects of the marketing or was he

1 working only in some of them?

2 A. Some of them. The majority.

3 Q. The majority of them?

4 A. Yes. But marketing is not necessarily something that
5 you can compartmentalize, because even if you're not
6 involved necessarily in the day-to-day aspects of the Amazon
7 marketing, if you are overseeing the brand and the creative,
8 you may not necessarily be making strategic decisions but
9 you are providing the creative for it.

10 Ryan may not have been making the strategic decisions
11 as far as like how much money to spend and where to put it,
12 but he was providing the creative. So in that way he had
13 his hands in all aspects, but it was just on different
14 levels.

15 Q. I'm trying to understand. Did he have his hands in all
16 aspects or did he control all aspects of marketing?

17 A. He had his hands in all aspects and controlled I would
18 say nearly all. Marc Werner made the final decision about
19 like finance and spend, as far as how much money to spend,
20 but the way that the money was spent is what Ryan
21 controlled.

22 Q. And that is true for all aspects of marketing?

23 A. I would say with the exception of Amazon, yes.

24 Q. I'm going to show you what has been marked as Exhibit
25 703, which we have seen before. You have it. It is this

1 document here.

2 A. Uh-huh.

3 Q. Did you create that document?

4 A. I did.

5 Q. Did you create it around February of 2017?

6 A. I don't know if it was February. I know that it was
7 after the Purple lawsuit was announced. That is when I was
8 asked to create this document. I don't know if that was
9 February. It seems like that was a little bit more into
10 March.

11 Q. But it was well after you first got there?

12 A. Yes.

13 Q. I am sorry.

14 A. This document is basically a representation of how -- I
15 had used a couple of weeks to try to get the internal team
16 to all work together, and I really saw it as an opportunity
17 to get a little bit more authority in the job that I thought
18 I was supposed to be doing.

19 Once the Purple lawsuit was announced I assumed that
20 Ryan would take a lesser role in things, so I got the
21 internal teams together and I said, okay, we're going to do
22 this. We started running tests on the website and cleaning
23 things up and trying to do things as an internal team
24 without the outside influence. I thought it was an
25 opportunity to show Marc, listen, I know what I'm doing.

1 You have a great team here and we can really do this. That
2 is what this document reflects. It is a very short span of
3 time, which was probably three weeks, and during that three
4 weeks is when the internal team took things over.

5 Q. So the internal team took things over but let's go
6 through it. Campaigns. Is Ryan responsible for any of
7 that, the team members?

8 A. Your question is is he responsible as far as this
9 document and this particular time or was he ever?

10 Q. Did you list him as being responsible for campaigns?

11 A. No, I did not.

12 Q. Okay. Advertising. Digital. Was he responsible for
13 that?

14 A. So --

15 MR. MAGLEBY: Objection as to time, Your Honor. I
16 would like some foundation.

17 THE WITNESS: The timing of this document is
18 really critical because, like I said, this document reflects
19 the team efforts that resulted from a couple of weeks of us
20 trying to rally up together and take inside influence and
21 inside control over things.

22 Now, the digital line item there -- Ryan was
23 actually only -- he was involved in getting creative for
24 those things, so he would provide the actual graphic design
25 assets for those three things, but it seems like he was not

1 available either because he was unresponsive or he was
2 missing deadlines, and that is when I took it upon myself to
3 try and work with another vendor to provide that creative.

4 BY MR. HORWITZ

5 Q. Social media was Ryan. That was his specialty, was it
6 not?

7 A. Yes.

8 Q. And page search, that was William's speciality, was it
9 not?

10 A. Yes, who was Ryan's partner.

11 Q. Okay. Amazon. He is not listed there at all, is he?

12 A. No, he is not.

13 Q. Organic customer engagement and content. He is listed
14 with parentheses.

15 A. Yes. So the content -- he created quite a bit of the
16 content on the website.

17 Q. I am just asking you whether you listed him as being
18 responsible for it.

19 A. Yes.

20 Q. Okay. But only in parentheses?

21 A. In parentheses because I kind of saw it as a best case
22 scenario. I think this document was really more of like a
23 vision. Yes, this is what we have done over the last couple
24 of weeks, but this is where I see that the team could and
25 should go.

1 Q. And then we see him again in the marketing e-mail?

2 A. Yes. My name is not there.

3 Q. Right. If you look, your name is almost throughout
4 this document as responsible team members?

5 A. Well, ideally it should have been. I was the director
6 of marketing and that is the impression that I was given
7 that my job was. Like I said, over those couple of weeks I
8 really seized that opportunity to be the director, but it
9 was a very short-lived thing.

10 Q. Let's look at Exhibit 763.

11 This is November of 2016?

12 A. Uh-huh.

13 Q. Was that far enough along after you had been hired so
14 that you're now well aware that Ryan controls all aspects of
15 marketing?

16 A. I had been working there for about a month, and in that
17 time it was made very clear to me that, yes, I would not
18 make any progress or my voice would not be heard if Ryan
19 didn't have buy in. Yes, that was clear.

20 Q. Let's look at page 2 of that. This is an e-mail from
21 you at the bottom.

22 A. Okay.

23 Q. So Ryan Monahan is listed only on one issue, is he not?

24 A. Which one? You said the e-mail at the bottom?

25 Q. Make note that next Thursday the following drafts are

1 due for discussion. One, social ad words, ideas presented
2 at team meeting.

3 He is not listed there, is he?

4 A. I am sorry. I don't see where -- can you point to
5 where you are talking about?

6 Q. If you look at page 2, the e-mail from you, November 4
7 at 4:50 p.m.

8 MR. MAGLEBY: It is the third page.

9 THE WITNESS: It is the third page.

10 MR. HORWITZ: I'm sorry.

11 BY MR. HORWITZ

12 Q. Make note that next Thursday the following drafts are
13 due for discussion. First is social and ad words, ideas
14 presented at team meeting.

15 He is not responsible for that? He is not listed as
16 being responsible for that, is he?

17 Q. Well, if we go back to this other exhibit, the ad words
18 was William's responsibility, and it was really just kind of
19 a given that anything that had to do with social or ad
20 words, since they were included on the e-mail, they knew
21 that that was their deliverable.

22 Q. But he is not listed here as it being his deliverable,
23 is he?

24 A. No.

25 Q. E-mail blasts, creative drafts due, present at team

1 meeting. He is not listed there as being responsible for
2 that?

3 A. No.

4 Q. Correct?

5 E-mail strategy and lead nurturing due, Ryan Monahan.

6 So he is responsible for that?

7 A. Yes. So he --

8 Q. Landing page draft due, present at team meeting.

9 He is not listed as being responsible for that?

10 A. No.

11 Q. And press release draft due, he is not listed as being
12 responsible for that, is he?

13 A. No, he is not.

14 Q. Sorry?

15 A. No, he is not.

16 Q. Okay. I'm going to show you Exhibit 764.

17 A. If I may just say that the strategy --

18 Q. There is not a question pending.

19 A. Sorry.

20 Q. That is an e-mail from Gergeianne Brown to a number of
21 people including yourself?

22 A. Yes.

23 Q. It is dated January 14, 2017?

24 A. Yes.

25 Q. That is well after you say you were made aware that

1 Ryan controlled everything?

2 A. Yes.

3 Q. Let's look down I think to the third paragraph, all
4 creative projects would be coordinated by Cynthia.

5 Do you see that?

6 A. Yes.

7 Q. And the good news is Ryan, as part of the Achieve team,
8 can ensure brand continuity.

9 A. Yes.

10 Q. He is not the team leader, is he? He does not
11 coordinate things, does he?

12 A. Lead or coordinate?

13 Q. Either one.

14 A. According to this, no.

15 Q. Now, I refer you to Exhibit 765. These are a series of
16 text messages between you and Cynthia Howland?

17 A. Yes.

18 Q. And Cynthia Howland is who?

19 A. I'm not really sure what her title was, but she was
20 part of the Achieve team.

21 Q. She was the team leader of the Achieve team, was she
22 not?

23 A. Well, Georgianne Brown was the C.M.O., so I perceived
24 her as having the highest, most authoritative title. I
25 would think Cynthia was more of a coordinator.

1 Q. Let's look at the second page. This is dated 10-18 of
2 2016, right?

3 A. Okay.

4 Q. Look at the second page. At 3:43 p.m. you say, and
5 from Marc I almost got verbatim that he wanted me to be his
6 eyes and ears for all things marketing. Then you say I am
7 pretty confident in saying that he wants me to be the hub
8 and have my hands in all things.

9 A. Yes.

10 Q. And Cynthia later on responds, that was exactly my
11 understanding.

12 Is this where everybody is telling you and was Cynthia
13 Howland telling you that Ryan is in charge of everything?

14 A. I don't --

15 Q. Is this one of the ways that you learned that Ryan was
16 in charge of everything?

17 A. No.

18 Q. Let's go to Exhibit 766. This is a series of e-mails
19 from Georgianne Brown to a number of people including
20 yourself, correct?

21 A. Yes, sir.

22 Q. And if you look at page 2, she is calling a meeting,
23 correct?

24 A. Yes, sir.

25 Q. This is dated January of 2017, correct?

1 A. Yes, sir.

2 Q. Well after you have been made aware that Ryan is in
3 charge of everything relating to marketing, right?

4 A. Yes, sir.

5 Q. Okay. Look at the meeting and it says Ryan Monahan
6 optional.

7 Do you see that?

8 A. I do.

9 Q. So he is optional at a marketing meeting when he is in
10 charge of everything?

11 A. That is what this says.

12 Q. Let's look at Exhibit 767. This is in May of 2017.
13 This is an e-mail from you to Marc Werner and other people?

14 A. Yes.

15 Q. And that [REDACTED], that is your personal
16 e-mail?

17 A. Yes.

18 Q. Now, if you look at the third paragraph, as the only
19 director level person in the company who reports to you,
20 perhaps an additional layer would provide more constant
21 oversight, right?

22 A. Yes, sir.

23 Q. But Ryan Monahan was in charge of all marketing, so he
24 was an additional layer over you and he controlled
25 everything related to marketing.

1 Why did you need an additional layer?

2 A. Could I elaborate?

3 Q. Well, was he an additional layer? Was he responsible
4 for all of the marketing and was telling you what to do?

5 A. You're asking me to elaborate?

6 Q. I am asking you whether he was an additional layer on
7 top of you, responsible for all of marketing?

8 A. Yes.

9 Q. But, nevertheless, you're saying as the only director
10 level person -- reports to you. The to you is Marc Werner?

11 A. Yes, sir.

12 Q. An additional layer would have been Mr. Monahan if he
13 was in charge of all marketing, correct?

14 A. That is kind of a complicated question and I am not
15 sure how to --

16 Q. An additional layer is somebody who you report to who
17 then reports to Marc, and you said that Mr. Monahan
18 controlled all aspects of marketing.

19 A. Yes.

20 Q. And you had to pass everything by him, correct?

21 MR. MAGLEBY: Your Honor, I would like Mr. Horwitz
22 to give the witness the courtesy of letting her finish her
23 answers.

24 MR. HORWITZ: Your Honor, I am --

25 THE WITNESS: I just wasn't sure if this is

1 something I should elaborate on or give a yes or no answer.

2 BY MR. HORWITZ

3 Q. Give a yes or no answer. Was there an additional layer
4 of Mr. Monahan who you had to pass all marketing decisions
5 through?

6 A. So elaborate?

7 Q. No. Yes or no, was there an additional layer of Mr.
8 Monahan --

9 A. Yes, sir.

10 Q. Okay. Thank you.

11 I am going to ask you to look at Exhibit 768. This is
12 an e-mail from you to Marc Werner and Alan Hirschhorn,
13 correct?

14 A. Yes, sir.

15 Q. And this is January 9 of 2017?

16 A. Yes, sir.

17 Q. If you look at the third paragraph it says, if I -- and
18 that is you, right?

19 A. Yes.

20 Q. -- may make a recommendation, I would like to focus on
21 the plans to optimize the spend on Google and Facebook.

22 Do you see that?

23 A. Yes.

24 Q. All other aspects of the marketing are now being
25 handled in-house.

1 Do you see that?

2 A. Yes, sir.

3 Q. I'm sorry?

4 A. Yes, sir.

5 Q. Okay. So this is January prior to what you described
6 as the litigation with Purple, right?

7 A. Yes, sir.

8 Q. So this is prior to you trying to reorganize as you
9 described in Exhibit 703, right?

10 A. I don't know that we finalized what the date of this
11 was, because I can't recall what the date of this was.

12 Q. You said it was after the litigation with Purple began,
13 correct?

14 A. It seems like that is what I remember, yes, sir.

15 Q. Campaigns. Is everybody listed there in-house?

16 A. Yes, sir.

17 Q. And then digital and social and Facebook -- let's go
18 down to the website. Other than Ryan in parentheses, is
19 everybody there in-house?

20 A. Yes, sir.

21 Q. Let's go down to Amazon advertising. Is everybody
22 there in-house?

23 A. Yes, sir.

24 Q. And then marketing and e-mail and you have Ryan there,
25 but other than that, is everybody there listed in-house?

1 A. Yes, sir.

2 Q. So in January of 2017 you say that you had taken
3 everything except Google and Facebook in-house, and within a
4 month or two after that you list what everybody is doing and
5 it is all in-house people except for a couple of special
6 items of Facebook and social and Ryan on e-mail.

7 So when you said that you took it all in-house, you
8 were responsible for all of it, weren't you?

9 A. I am sorry. I wasn't --

10 Q. Was Ryan Monahan in-house?

11 A. No, he was not.

12 Q. So when you say that you took it in-house, you meant
13 you. You were the director of marketing at the time, were
14 you not?

15 A. That was my title.

16 Q. You were in-house, were you not?

17 A. Yes, sir, I was.

18 Q. And the other people listed in here are all in-house?

19 A. Yes, sir.

20 Q. But you say despite that you had taken it in-house,
21 Ryan, who was not in-house, controlled everything at this
22 time, right? That is what your declaration says?

23 A. He had a great deal of influence over every aspect,
24 yes.

25 Q. I didn't ask you whether he had a great deal of

1 influence. I asked you whether in your declaration you said
2 not that he had influence -- let's look directly at what
3 your declaration said. Your declaration said, paragraph
4 nine, in fact, it became immediately apparent to me after I
5 started that Ryan controlled every aspect of GhostBed's
6 marketing and this continued up until the day I resigned.

7 A. Yes, sir.

8 Q. Had you resigned at the time that you created this?

9 A. No, sir.

10 Q. Had you resigned at the time that you said that all
11 other aspects other than Facebook and Google were being done
12 in-house?

13 A. No, sir.

14 Q. Ryan was not in-house at this time, was he?

15 A. No, sir.

16 Q. He was not in-house at any time, was he?

17 A. Can you define in-house, please?

18 Q. Was he employed by GhostBed?

19 A. Employed in what way?

20 Q. Employed in any definition. Was he being paid a salary
21 by GhostBed? Was he an employee? Do you understand what
22 that means?

23 A. Well, because --

24 MR. MAGLEBY: Your Honor, there are three
25 questions there. It is compound and argumentative.

1 MR. HORWITZ: Let me start over.

2 THE COURT: You are getting a tad argumentative
3 and a bit badgering.

4 MR. HORWITZ: I apologize.

5 THE COURT: A little more courtesy might be nice.

6 BY MR. HORWITZ

7 Q. When it says all other aspects of marketing are now
8 being handled in-house, you meant Ryan Monahan as in-house?

9 A. I think that the caveat to that question is that
10 Facebook and Google were 75 percent of the marketing, and
11 that a lot of the other things, you know, with Amazon being
12 the other 25 percent as far as like the spend and the amount
13 of effort that was needed.

14 A lot of the other things were like creative, you know,
15 making ads and graphic designs. Did Ryan have a physical
16 location at GhostBed? No. He came periodically for
17 meetings. Was he an employee as far as being on salary? I
18 am not the H.R. person and I am not accounts payable. I
19 would have to say no, he was not. Was his influence at a
20 level where I felt like he was constantly in control over
21 everything? I would have to say yes.

22 Q. Okay. So all other aspects of marketing are now being
23 handled in-house, but you are saying that is just a really
24 small piece of the marketing? Is that what you're saying?

25 A. Yes.

1 Q. When we look at the list, what percentage did the
2 holiday sales campaign comprise of marketing?

3 A. Well, that was probably just like a four-week promotion
4 or something, so like that was a temporary promotion. It
5 was not something that was ongoing. The same with
6 promotional campaigns. They were just like sporadic things
7 that happened throughout the year.

8 Q. Did they comprise a significant portion of sales?

9 A. The sales came through Facebook and Google, so --

10 Q. I'm asking whether these comprised, however they came
11 in, did the efforts in the holiday sales campaign and
12 promotional campaign comprise a significant amount of the
13 sales of GhostBed?

14 A. I mean, that is like asking me to compare did three
15 week of sales comprise a significant amount compared to the
16 other 48 weeks of sales. I am not really sure how to answer
17 that as far as like scale. What I will say is that any
18 retail company does definitely depend on holidays and
19 seasonality to see like a bump in sales.

20 Q. And promotional campaigns to see a bump in sales?

21 A. Depending on seasonality, yes.

22 Q. And digital for a bump in sales?

23 A. The digital campaigns were never really a big priority
24 for Marc. They were definitely not a large portion of the
25 spend or the revenue. Much of the digital campaigns were

1 seen more for like branding and exposure. I think of it as
2 like an online billboard almost.

3 Q. So an online billboard, that shouldn't be a significant
4 part of the sales efforts?

5 A. Of the sales revenue or sales efforts?

6 Q. Either one.

7 A. They are different things. I would say that the
8 digital campaigns were not a large portion of the sales
9 revenue, as far as those specific digital campaigns listed
10 there on that line item. That is all retargeting, et
11 cetera. The bulk, and I mean 75 percent of the revenue,
12 came from Facebook and Google AdWords.

13 Q. And so the Amazon advertising --

14 A. Was about 25 percent.

15 Q. Was about 25 percent?

16 A. 24 percent. Those other little things, they did not
17 have a huge influence.

18 Q. Branding did not have a huge influence?

19 A. Branding actually does not make sales. Branding is
20 just about a consistent voice and how you represent your
21 product to the public.

22 Q. Your e-mail here to Mr. Werner is a little bit
23 deceptive. All other aspects of marketing are now being
24 handled in-house. That was just a very small piece of it
25 you were talking about?

1 A. So in the marketing world, if you were to
2 compartmentalize these different sections here, there are
3 the ones that make the money and then there are the ones
4 that are essentially creative. If you read between the
5 lines of what did make money here and what was also
6 continuous, because a lot of campaigns, like I said, were
7 sporadic, and the campaigns intersected with the digital
8 ads, and the digital ads intersected with the website, so
9 like all of this is very intertwined.

10 What it was that we took in-house was some of the
11 creative so that the deadlines could be met and some of the
12 edits on the website.

13 Q. In other words, when you say other than Google and
14 Facebook all other aspects of marketing are being done
15 in-house, it is just a little bit of creative, a little bit
16 of this and a little bit of that and it is nothing much, and
17 that is what this e-mail says?

18 A. Yes, sir.

19 Q. Okay. Let's go on to paragraph 10 of your declaration.
20 In my attempts to clarify my position at the company I met
21 with Marc's wife, Donna, who oversaw human resources, at
22 least twice asking for a clarified job description with
23 delineated roles. Donna told me point-blank that I could
24 never have succeeded at my job because Ryan was doing all of
25 the marketing duties and they wanted him to continue to do

1 them.

2 A. Verbatim, yes, sir.

3 Q. That is verbatim?

4 A. Yes.

5 Q. Exhibit 769. This is an e-mail from you to somebody at
6 Mr. Magleby's firm?

7 A. Yes, sir.

8 Q. Yes. What you point out to him is that the earlier
9 draft of your declaration does not have paragraph 10 about
10 your meetings with Marc's wife Donna.

11 A. Yes.

12 Q. And you wanted that added?

13 A. Yes, sir.

14 Q. Let's look at Exhibit 770. First of all, this is
15 February 21?

16 A. Yes, sir.

17 Q. This is well after you were told that Ryan controlled
18 all aspects of marketing?

19 A. Well after I was told? I said in my declaration that I
20 got the impression and that it was clear to me, but I didn't
21 say anyone said that until my meeting with Donna. That is
22 actually when it was verbally told to me was this meeting
23 with Donna.

24 Q. Well, look at paragraph six of your declaration.

25 Immediately after I was hired, my co-workers told me that

1 someone named Ryan, who worked off-site, was in charge of
2 GhostBed's marketing.

3 A. So when your coworker tells you something and when your
4 coworker says casually, oh, you may not want to do that
5 because Ryan is doing that, you know, you kind of take it
6 with a grain of salt because your title is director. That
7 is obviously something that you're going to be able to find
8 a work around or work with this person, but when the owner's
9 wife tells you, who is also the director of human resources,
10 that Ryan is doing the digital work and they want him to do
11 the digital work, you take it a little bit differently.

12 Q. Okay. In paragraph 8, the second sentence, in fact,
13 Ashley Werner, Marc Werner's daughter, told me that Ryan was
14 the real director of marketing. Somebody told you that he
15 was in charge of marketing, did they not?

16 A. Yes. I think at that point I definitely did not know
17 Ashley's position either. That conversation was probably in
18 my first two weeks of starting. I was under the impression
19 that she was just -- her only role was responding to
20 comments on Facebook, and I knew that she was very close to
21 Ryan.

22 When she said to me -- when I asked her like what am I
23 supposed to do if there is something that he is doing that I
24 don't agree with or that I think could be done better, who
25 do I talk to about it? She was like, oh, he is fine. Just

1 let him roll with it. I said, okay. So Ryan is the real
2 director of marketing? At that point I was kind of being
3 facetious. I was kind of joking. She said, yeah, very
4 casually.

5 I didn't really know how to take that at that point.
6 It kind of threw me for a loop. Again, I didn't understand
7 really what role Ashley was playing.

8 Q. When we started what this question was about was you
9 said nobody told me, I just learned about it, and now two
10 sets of people tell you, coworkers told you and --

11 A. Yes, they did.

12 Q. -- Ashley Werner told you?

13 A. Yes.

14 Q. So people did tell you that?

15 A. Yes.

16 Q. And Donna Werner told you that?

17 A. Donna Werner told me. She looked at my job
18 description. There is no way you could have succeeded in
19 this role. Ryan is performing these duties and we want him
20 to perform these duties.

21 Q. Let's look at Exhibit 770, dated February 21, 2017,
22 well after you're aware that Ryan Monahan controlled all
23 aspects of marketing, right?

24 A. That was actually the purpose of this meeting, yes.

25 Q. Right. It says, dear Donna, thank you for taking time

1 to meet with me yesterday. I woke up feeling refreshed and
2 reassured that I can and will be successful at Nature's
3 Sleep. This is the e-mail you sent her after she tells you
4 that you can't be successful?

5 A. Because she followed it up with a -- let me go and talk
6 to some folks and let's come up with a plan. So even if her
7 answer was let's come up with a plan, to me that was an
8 opportunity. I saw it as, okay, if he is going to be in
9 charge of that, just give me another lane to drive in and I
10 will own it. That is why I said, in that second to the last
11 paragraph, the one detail that I'm headstrong on addressing
12 is the delineation of roles.

13 Q. Let's go back to what you said in your declaration.

14 A. Yes, sir.

15 Q. In my attempts to clarify my position at the company, I
16 met with Marc's wife Donna, who oversaw human resources at
17 least twice asking for a clarified job description with
18 delineated roles. Donna told me point-blank that I could
19 never succeed at my job because Ryan was doing all the
20 marketing duties and they wanted him to continue to do them.
21 After meeting with her you send her a letter saying that you
22 woke up refreshed, that now you know you can succeed at your
23 job.

24 Is that correct?

25 A. Yes, sir, because she said let's develop a plan.

1 Q. She told you point-blank that you could never succeed
2 at your job, but let's develop a plan?

3 A. Yes, sir.

4 Q. Thank you for taking the time. I woke up feeling
5 refreshed and reassured that I can and will be successful at
6 Nature's Sleep.

7 A. Yes, sir.

8 Q. All that because she said you can never succeed at your
9 job, but we'll try a plan?

10 A. No. All of that because I had been with the company
11 for five months and that was the first time that anyone had
12 even addressed what I was going through. Marc just
13 completely ignored me. It was the first time that anyone
14 finally said let's figure out what your role is. So I felt
15 like if she was serious about developing a plan that I could
16 be okay.

17 Q. Let's go back to Exhibit 765. This is a text message
18 between you and --

19 A. I am sorry. Do I have that?

20 Q. Yes, you do.

21 A. Okay.

22 Q. It is the text message.

23 A. Yes, sir. I have it.

24 Q. Look at the last page. From Marc I got almost verbatim
25 that he wanted me to be his eyes and ears in all things

1 marketing. I am pretty confident in saying that he wants me
2 to be the hub and have my hands in all things.

3 So you say Marc never addressed what he wanted you to
4 do, and that meeting with Donna was the first time that you
5 had an understanding of what was being required of you?

6 A. Meeting with Donna was the first time that I felt like
7 anyone was going to help me understand what was required of
8 me. This messaging back and forth with Cynthia was about
9 four days after I was hired.

10 Q. Cynthia Howland is saying that she was the coordinator
11 and the team leader for the group at Achieve and she is
12 saying that that was exactly my understanding?

13 A. Yes, because I am asking her the question and I said
14 shouldn't the director of marketing be involved in
15 everything? I didn't understand why I was being excluded
16 from so much.

17 Q. Well, after the first couple of days you were being
18 excluded from so much? This is October 18th.

19 A. Yes, sir.

20 Q. What you said before was that nobody delineated your
21 role. How much more of a delineation could Marc have said?
22 You got almost verbatim that he wanted you to be his eyes
23 and ears of all things marketing, and I am pretty confident
24 saying that he wants me to be the hub and have my hands in
25 all things, and the head of the Achieve group that Ryan

1 reported to says that was exactly my understanding.

2 A. Cynthia was not the head of the Achieve group. She was
3 more of a coordinator. I don't think that she ever really
4 had a strong understanding of what -- she said that is what
5 her impression was. I don't see that as a definitive answer
6 from her, but she was definitely not a lead in that group.

7 Q. Does she say that was my impression or that was my
8 understanding?

9 A. She said that was my understanding.

10 Q. Okay. Thank you.

11 Let's look at paragraph 11 of your declaration. For
12 example, Ryan managed and controlled every aspect of the
13 GhostBed website from before the time I was hired until the
14 day that I left GhostBed. I assume that he still does.

15 Do you see that?

16 A. Yes, sir.

17 Q. That is true?

18 A. Yes, sir.

19 Q. Let's look at Exhibit 773.

20 That is an e-mail exchange between you and Marc Werner
21 and Ashley Werner, right?

22 A. Yes.

23 Q. And you are talking about the website?

24 A. Yes, sir.

25 Q. If you look at the e-mail, the first e-mail, the one at

1 the bottom --

2 A. That is the first e-mail that is included on this
3 paper, but there is a lot of conversation missing from this
4 e-mail chain.

5 Q. Okay. If you look at the second page, it says but the
6 approval process -- that is the approval process for the
7 website?

8 A. Yes, sir.

9 Q. -- starts and ends with the director of marketing.

10 That is you?

11 A. Yes, sir.

12 Q. Then Marc Werner responds by saying I decide what
13 happens to the website?

14 A. Yes, sir.

15 Q. It does not say Ryan decides, does it?

16 A. The e-mail that is not included in this does say that,
17 from Ashley.

18 Q. Is Ashley the president of the company?

19 A. No, sir, she is not.

20 Q. Marc is the president of the company?

21 A. Yes sir.

22 Q. Marc says to you I decide what happens to the website?

23 A. Yes, sir.

24 Q. He does not say that Ryan does?

25 A. Absolutely.

1 Q. And then you respond clearly and absolutely and any
2 decision we implement internally directly involves you
3 through me?

4 A. Yes, sir.

5 Q. It doesn't say through Ryan, does it?

6 A. No, sir.

7 Q. And it does not say that we have to check with Ryan
8 before we do anything, does it?

9 A. The piece that is missing from -- no, it does not say
10 that.

11 Q. Now, if you look at paragraph 13 of your declaration it
12 says, for example, Ryan posted the GhostBed blog post about
13 the terrible incident concerning a GhostBed employee who was
14 injured because of domestic violence.

15 Do you see that?

16 A. Yes, sir.

17 Q. When was that posted?

18 A. I don't recall.

19 Q. In fact, it was posted before you came to the company,
20 wasn't it?

21 A. I don't recall. I know that the incident occurred just
22 a few days before I started, but I'm not sure if the blog
23 post was done within a couple of days, a couple of days
24 after. I don't recall.

25 Q. You have no personal knowledge who created that post,

1 do you?

2 A. Through what employees told me.

3 Q. Through what employees told you?

4 A. Yes.

5 Q. But you have no personal knowledge of who created that
6 post?

7 A. Meaning did I see him create it or did I ask him to
8 create it? No, I did not.

9 Q. Did he ever tell you he created it?

10 A. You know, I don't recall. I think I may have had a
11 conversation with him about it, but I don't think it went
12 into much detail and it is not a memory that I probably
13 would have gone out of my way to retain.

14 Q. In fact, wasn't it created by her prior employer?

15 A. I know nothing about that, sir.

16 Q. Wasn't it created and then Marc made some word changes
17 and added a picture?

18 A. I know nothing about that, sir. I know that there was
19 a blog post and that there was the GoFundMe account. I know
20 that one of them and -- the employee who works on the
21 website told me that Ryan did that.

22 Q. The information that you had was that Ryan wrote that?

23 A. That Ryan posted one of those things about Heilyn being
24 injured, yes.

25 Q. Let's look at paragraph 21 of your declaration.

1 A. Yes, sir.

2 Q. Ryan would often go over to Marc Werner's house for
3 dinner.

4 How do you know that?

5 A. Marc would tell me.

6 Q. Marc would tell you?

7 A. Yeah. He would say Ryan was over for dinner.

8 Q. He would tell you that. Paragraph 22 says I suspect
9 that Ryan is being paid under the table by GhostBed.

10 You suspect? You have no knowledge of that?

11 A. No knowledge, sir.

12 Q. But it didn't stop you from putting it in a declaration
13 that you suspect it?

14 A. I guess that is why it says suspect.

15 Q. Right. But you were putting everything in this
16 declaration that you could possibly think of to damage
17 GhostBed, didn't you?

18 A. To damage? No. I think it was more just sharing my
19 story and what I observed.

20 Q. Well, let's look at your declaration. Can you point
21 out any place in your declaration where you say you know or
22 you suspect that Mr. Werner or GhostBed are involved or
23 behind or arranged for the posting of anything on Honest
24 Mattress Reviews?

25 A. I actually was not asked to comment on that.

1 Q. I didn't ask what you were asked to comment on. Does
2 anything in your declaration say anything about GhostBed's
3 relationship with Honest Mattress Reviews?

4 A. No, sir.

5 Q. Now, you are aware that GhostBed had confidential
6 information, are you not?

7 A. Actually, I'm sorry, there is something here in
8 reference to Honest Mattress Reviews, paragraph 38.

9 Q. 28?

10 A. 38.

11 Q. 38.

12 A. And 39 and 40 and 41 and that whole page.

13 Q. 38. I read the declaration that Marc Werner filed in
14 this case which is attached. That relates to Honest
15 Mattress Reviews?

16 A. Yes, sir.

17 Q. Okay. Many of the statements in Marc's declaration
18 were false. That is Honest Mattress Reviews?

19 A. Yes, sir.

20 Q. It says GhostBed does not have any affiliation
21 whatsoever with defendant Mr. Monahan. You say that is not
22 true. That has to do with Honest Mattress Reviews?

23 A. With Ryan being associated with or the creator of
24 Honest Mattress Reviews, yes.

25 Q. Okay. So the fact that they have a close relationship

1 means that he is involved in every aspect of what Ryan does?

2 A. Can you rephrase that?

3 Q. No. We can go on.

4 You were responsible for ensuring that confidential
5 information of GhostBed was not disclosed, were you not?

6 A. Responsible in what way, sir?

7 Q. You were responsible for ensuring in any way that
8 confidential information of GhostBed wasn't revealed; is
9 that correct?

10 A. I never signed anything saying that. I don't know what
11 would be defined as me being responsible for it.

12 Q. I am going to show you Exhibit 754.

13 This is a nondisclosure agreement signed by you, if you
14 look at the last page.

15 MR. MAGLEBY: Is there a copy for us?

16 MR. HORWITZ: Yes, sir.

17 THE WITNESS: Yes. This is an N.D.A. that was
18 sent to an outside S.E.O. consultant, Rich Bernstein.

19 BY MR. HORWITZ

20 Q. You were responsible for making sure that Rich
21 Bernstein was aware and signed an agreement that certain
22 information was confidential, right?

23 A. For making sure that Rich Bernstein was aware of that,
24 yes, Marc did give me the authority to sign this document.

25 Q. You were certainly aware that there was such

1 confidential information, were you not?

2 A. Yes, sir.

3 Q. And you were aware that there was a handbook that you
4 acknowledge reading that talked about how such confidential
5 information should not be brought home, right?

6 A. No, sir. I am not aware of that.

7 Q. No?

8 A. At least I don't remember what the specifics of the
9 handbook said.

10 Q. Let's look at Exhibit 752.

11 MR. MAGLEBY: Your Honor, again, I have tried not
12 to interrupt and it is cross, but with regard to the
13 specific issue of Mr. Monahan's ties to GhostBed, I don't
14 see how it is relevant. If they want to do this in a
15 different context, great, but this is not discovery for --

16 MR. HORWITZ: Your Honor, this directly relates to
17 the credibility of the witness, where the witness takes
18 confidential information, highly confidential information
19 and applies for jobs elsewhere in the mattress industry.

20 THE COURT: Do you have her on such an agreement?

21 MR. HORWITZ: Yes, Your Honor.

22 THE COURT: Really?

23 MR. HORWITZ: Yes, the GhostBed employee handbook
24 that she acknowledged, and the --

25 THE COURT: But on an agreement like this one, a

1 nondisclosure agreement?

2 MR. SPERLEIN: Not with that, Your Honor, but with
3 the employee handbook that she acknowledged reading and
4 agreeing to.

5 THE COURT: I understand what you're trying to do.
6 I'm sustaining the objection. It is beyond the scope of
7 this hearing.

8 BY MR. HORWITZ

9 Q. You called Purple's lawyers, did you not?

10 A. No, I did not.

11 Q. You did not?

12 A. Not that I recall.

13 Q. Okay. That is a declaration by Christine Greenwood, an
14 attorney in this case for Purple.

15 A. Yes, sir.

16 Q. If you look at paragraph 7 it says shortly after my
17 discussion with Mr. Oglesby. Who is Mr. Oglesby?

18 A. He is an attorney who is also my uncle.

19 Q. I had a phone conversation with Ms. Anderson.

20 A. Yes, sir.

21 Q. So you did speak to Purple's attorneys?

22 A. I can't remember if I called -- you asked me did I call
23 them. I can't remember if I called them or if they called
24 me. I can't recall.

25 Q. Okay. Let's look at Exhibit 783.

1 MR. MAGLEBY: Your Honor, again, objection, beyond
2 the scope of the hearing.

3 THE COURT: Well, I will overrule that. Let's
4 hear what he asks. I assume Mr. Horwitz is saying it goes
5 to bias or something like that.

6 Right?

7 MR. HORWITZ: Yes, Your Honor.

8 THE COURT: If I had had the nondisclosure
9 agreement, I might have let the last one go. This is a
10 little closer. Let me hear your next question, please.

11 BY MR. HORWITZ

12 Q. That is the phone record, so you did call her?

13 THE COURT: You have asked that question. Neither
14 one of them could remember.

15 MR. HORWITZ: Yes, but there is the phone record
16 showing that Ms. Anderson made the call.

17 THE COURT: Well, that is you testifying now.

18 BY MR. SPERLEIN

19 Q. I am asking this witness is that your phone number?

20 A. This is my phone number, but the column here says to
21 and from, so I can't tell if that is saying I made the phone
22 call or the phone call came in to me.

23 Q. Okay. Looking at paragraph 7 of Ms. Greenwood's
24 declaration --

25 A. Okay.

1 Q. -- we briefly discussed the fact that Ms. Anderson was
2 employed by GhostBed, that she was looking for a new job and
3 was interested in working with Purple, and that she had
4 information that might be relevant to the lawsuit, and that
5 she did not want to talk about or reveal the information
6 until she had left GhostBed.

7 A. Yes.

8 Q. Do you see that?

9 A. Yes, sir.

10 Q. Is that an accurate representation of what you said?

11 A. Yes, sir.

12 Q. So what you said to them is I'm looking for a job and I
13 can help you with a lawsuit, but not until you hire me?

14 A. No, not at all. The word help definitely never came
15 out of my mouth. It was more like I am going to be a free
16 agent soon. I am a very hungry professional and I would
17 like to join your company. I want to say absolutely that I
18 have been indirectly involved in this case, and it disturbs
19 me, and I don't want to say anything about it.

20 Yes, I said I had been indirectly involved, meaning,
21 yeah, I had seen a lot and I have heard a lot, but I don't
22 want to discuss it. I did the same thing when I reached out
23 to other competitors asking if they were hiring. I said I
24 will not discuss GhostBed.

25 Q. This says I have something relevant to the lawsuit.

1 You're dangling in front of them that you have information
2 that will be helpful once I leave and I need a new job in
3 order to leave.

4 Isn't that what this says?

5 A. Absolutely not.

6 Q. Now, if you look at Exhibit 786, this is an e-mail you
7 sent to Purple on May 30, 2017?

8 A. Yes, sir.

9 Q. And the phone call you had was on May 17th, right?

10 A. Yes, sir.

11 Q. So on May 17 you called the lawyers in the lawsuit and
12 said, would Purple be interested in hiring me? And not
13 until 13 days later did you actually send an e-mail to
14 Purple?

15 A. Like I said, I can't remember if I called them or if
16 they called me. I had my uncle reach out to them. I waited
17 a couple of days at the advice of counsel to submit my
18 resume to Savannah.

19 Q. Are you in the habit of applying for jobs at companies
20 by giving a call to their attorneys?

21 A. I wanted the attorneys to know that I had honest
22 intentions, that I was not trying to -- I was not trying to
23 like spy or anything crazy like that. I wanted them to
24 know, look, listen, I am just a professional looking for a
25 place to land.

1 Q. So you thought it appropriate to apply for a job by
2 speaking to attorneys?

3 A. I did not apply for a job.

4 Q. You said that you were looking for a job.

5 A. I didn't apply with them. I didn't apply with the
6 attorneys. I reached out directly to the communications
7 director at Purple, who I figured would be a good person to
8 assess my potential fit in the company.

9 Q. But that was later. Why did you first call the
10 attorneys if not to dangle in front of them the fact that
11 you could help them in the litigation?

12 A. It was definitely not to dangle. If it were to dangle,
13 then I would have offered information up and I never did,
14 not to anyone, not to any competitor and I never would have,
15 ever.

16 Q. Let me understand you correctly. You said to them that
17 I want to leave GhostBed. I need another job. I have
18 relevant information that I can't tell you until I have
19 another job.

20 A. I did not say I can't tell you. I didn't say I can't
21 tell you in terms of I am going to hold it close until you
22 hire me or don't hire me. I made it very clear to my uncle
23 that I was leaving GhostBed. Not might. No, it was
24 happening. That I was applying to several places, many of
25 whom were not even in this industry, and if it happened that

1 Purple saw me to be a good fit to come and work for their
2 company, that would have been awesome.

3 If they didn't, listen, here is who I am and I know
4 that I'm going to be deposed, because Marc and Ryan both put
5 my name in their depositions with false statements and they
6 brought me into this. I know I'm going to be deposed. One
7 way or another if I am going to be called to get involved in
8 this case, it might as well be to tell the truth.

9 Q. So you're saying here -- Ms. Greenwood says we briefly
10 discussed that fact that Ms. Anderson was employed by
11 GhostBed.

12 That is correct, right?

13 A. Yes.

14 Q. That she was looking for a new job and was interested
15 in working with Purple.

16 That is correct?

17 A. Yes, sir.

18 Q. That she had information that might be relevant to the
19 lawsuit.

20 That is correct?

21 A. Yes, sir.

22 Q. And that she did not want to talk about or reveal the
23 information until she had left GhostBed and secured a new
24 job.

25 That is correct?

1 A. Yes, sir.

2 Q. That is correct?

3 A. Yes, sir.

4 Q. In other words, what you were saying is that I have got
5 good stuff, and as soon as I leave GhostBed I can tell you,
6 and I need a new job in order to leave GhostBed. Isn't that
7 what you were saying?

8 A. My moral compass would never even allow that thought to
9 come into my head. I think that this is a case of maybe
10 some missed punctuation, maybe a few periods or a few
11 paragraphs missing, because it wasn't a streamed
12 conversation where it was like I am looking for a job and I
13 have got information. It was not like that. It was more
14 like if I do happen to go to work for Purple, that would be
15 great, but there are other people out there who want me as
16 well. I made that very clear.

17 I was talking to another competitor and that should be
18 in the evidence as well, and I made it clear to that
19 competitor that I will not discuss GhostBed.

20 Q. The reason you called the lawyers -- with the other
21 competitor, did you call their lawyers?

22 A. I did not call -- I do not recall if I called any
23 lawyers or if they called me.

24 Q. No. I'm asking with the other competitor did you deal
25 with lawyers or did you deal with the company?

1 A. The other competitor didn't have a pending lawsuit.

2 Q. I didn't ask that. I asked whether you spoke to the
3 company or you spoke to the lawyers?

4 A. I sent an e-mail via LinkedIn to a representative at
5 the company.

6 Q. But here you spoke to lawyers saying I got information
7 that is relevant. I can't talk about it until I leave.

8 Please give me a job at Purple.

9 Right?

10 A. Not at all, sir.

11 Q. That is not what it says?

12 THE COURT: This has been asked and answered.

13 MR. HORWITZ: I'm fine, Your Honor.

14 THE COURT: You're past your hour.

15 MR. HORWITZ: I have a little bit more with some
16 leeway.

17 THE COURT: I will give you some leeway, but not
18 when you ask the same question probably eight times.

19 MR. HORWITZ: Okay.

20 BY MR. HORWITZ

21 Q. Exhibit 788.

22 Before we get to that, you have your counsel here,
23 right?

24 A. Yes, sir.

25 Q. Who is paying for the counsel?

1 A. I am not.

2 Q. You are not?

3 A. No, sir.

4 Q. You don't know who is?

5 A. I understand that Purple is.

6 Q. Going to Exhibit 788, is this a letter from your lawyer
7 to Nature's Sleep?

8 A. Yes, sir.

9 Q. If you look at paragraph --

10 A. Not him, though. This was something different.

11 Q. I understand. But this is another lawyer representing
12 you?

13 A. It was an employment lawyer that I reached out to in
14 seek of counsel, yes.

15 Q. In paragraph four it says in light of Nature's conduct,
16 Ms. Anderson is seeking the following: A fair and
17 reasonable settlement for back wages, future wages,
18 non-pecuniary damages, benefits and attorneys' fees and
19 costs and a positive letter of recommendation.

20 That is what you were looking for?

21 A. Yes, sir.

22 Q. When you left GhostBed did you get other employment?

23 A. Eventually, yes.

24 Q. How long were you out of work?

25 A. How long was I out of work?

1 Q. Yes.

2 A. A week, maybe.

3 Q. A week?

4 A. Around a week.

5 Q. When you say eventually it took a week?

6 A. I had been in search of employment, but I had a week
7 because -- no, it was probably a little bit closer to two
8 weeks, because when I gave my two weeks' notice, Marc
9 basically kicked me out of the building, so I had two weeks.

10 Q. You had a job lined up before you left GhostBed?

11 A. I had a prospect. I had several prospects.

12 Q. Let's look at Exhibit 789.

13 This is an e-mail from your attorney?

14 A. I never saw this e-mail, but it would appear to be so,
15 yeah.

16 Q. And it is to GhostBed's attorney?

17 A. I would assume so. I am not familiar with that name.

18 Q. Did you authorize your attorney to ask for a settlement
19 of \$25,000?

20 MR. MAGLEBY: Your Honor, I don't know, and she is
21 not my client, but that is privileged.

22 MR. HORWITZ: No, Your Honor. This is a letter,
23 and I didn't ask whether she was advised --

24 THE COURT: Overruled.

25 MR. HORWITZ: -- I asked whether it was

1 authorized --

2 THE COURT: Overruled.

3 That is privileged. Sustained.

4 MR. HORWITZ: Your Honor, I think facts are not
5 privileged. Whether she was advised to do it or not advised
6 to do it is one thing, but --

7 THE COURT: That is what I thought your question
8 was.

9 MR. HORWITZ: No. My question was whether she
10 authorized him to make this offer of settlement.

11 THE COURT: How does that not reach into the
12 communication between herself and her attorney?

13 MR. HORWITZ: Because it is a factual issue. It
14 is not an advice issue.

15 THE COURT: Thank you for that lecture.

16 Sustained.

17 MR. HORWITZ: Thank you.

18 BY MR. SPERLEIN

19 Q. You were asking for \$25,000 from GhostBed?

20 A. I reached out in a letter strictly because Marc Werner
21 threatened me on my last day, and I did not know how a girl
22 like me was going to fight a millionaire like him, when he
23 made it very clear that if any little thing happened he
24 didn't like, he would come after me without mercy.

25 Q. So --

1 A. I reached out to a lawyer and I asked that lawyer to
2 help me see if there were any employment laws, anything that
3 would help me have some insulation and some protection.

4 Whether or not I got involved with the Purple case, I was
5 scared of him.

6 Q. In other words, you were afraid of what he would do so
7 you demanded \$25,000 from him?

8 A. I am not going to say I demanded anything, sir.

9 Q. Your attorney demanded \$25,000 as a way of insulating
10 you from him?

11 A. You know, I felt like I was completely misled in this
12 whole thing. I felt like I was treated horribly. I just
13 thought, you know what, maybe there is something out there,
14 some kind of employment law that covers the damage that this
15 has done to my life.

16 Q. And calling up Purple's attorneys and saying I have
17 relevant information, why don't you hire me, was a way of --

18 A. Completely unrelated instances.

19 Q. Unrelated?

20 A. I was not trying to insulate myself with Purple at all.
21 I called this attorney because he is an employment attorney,
22 and I know enough about my mental knowledge of the law to
23 know that that is a very specific area, especially in an at
24 will state, but I just assumed that from the way that they
25 treated me, that there might be something out there for me

1 to get those eight or nine months of my life back because it
2 was horrible.

3 Q. It was so horrible that you had to reach out and get
4 back at them by helping Purple?

5 A. You know, I didn't want to get back at anyone. I still
6 don't want to get back at anyone. I am not even here
7 today -- I didn't leave my family in the face of a hurricane
8 to get back at anyone. I am just here to tell the truth.

9 Q. You're here to tell the truth, but you initiated the
10 contact with Purple, did you not?

11 A. Because Marc threatened me, and I knew that no matter
12 what, I needed to find some way to have legal
13 representation, not insulation regarding my experience, but
14 just to make sure that they couldn't bring me into this
15 lawsuit. I reached out to Purple because initially, hey,
16 I'm on the market. I am smart and educated. I am going to
17 be available.

18 I wanted to speak to the lawyers because I wanted them
19 to know that I was not an unscrupulous person just because I
20 was coming from an unscrupulous place. I have honest
21 intentions.

22 Q. So Marc threatened you you say the last day that you
23 were there?

24 A. When I turned in my two weeks' notice, Marc called me
25 into his office and he said if anything about this company

1 appears anywhere, including your resume, I will come after
2 you litigiously and without mercy. I said, sir, I know
3 enough about you at this point to know that. You don't have
4 to threaten me.

5 Q. In order to protect yourself, a couple months before
6 that you contacted Purple? The fact that you --

7 A. That had nothing to do with protection. That was
8 transparency.

9 Q. That was transparency?

10 A. Yes, sir.

11 Q. You were volunteering to help somebody while you were
12 working for GhostBed?

13 A. No, sir. I wouldn't say that I was volunteering to
14 help anyone.

15 Q. You said to them I have relevant information. Were you
16 working for GhostBed at the time that you called them and
17 said I have relevant information?

18 A. I will not confirm -- I cannot recall if I called them
19 or if --

20 THE COURT: Sustained.

21 MR. MAGLEBY: Objection.

22 MR. HORWITZ: No further questions, Your Honor.

23 THE COURT: Thank you.

24 Mr. Magleby.

25 Could I ask, are you planning to ask any

1 questions?

2 MR. SPERLEIN: No, Your Honor. Thank you.

3 THE COURT: Okay. How long do you expect to be?

4 MR. MAGLEBY: 15 minutes.

5 THE COURT: Well, then let's just go ahead.

6 MR. MAGLEBY: All right.

7 REDIRECT EXAMINATION

8 BY MR. MAGLEBY

9 Q. Was one reason that you reached out to Purple was
10 because you got your hands on a declaration signed by Marc
11 Werner?

12 A. Yes, that had my name in it and it freaked me out.

13 Q. Did you also get a copy of a declaration signed by Ryan
14 Monahan?

15 A. Yes, sir. Same response.

16 Q. Did Mr. Werner or Mr. Monahan ever tell you that they
17 were going to put your name in a declaration?

18 A. No.

19 Q. Were you upset?

20 A. I was scared. I am scared.

21 Q. Why were you scared?

22 A. Because I had been working for these people for a
23 certain amount of time and I wasn't treated very well, so to
24 think that I was involved with people with that low level of
25 like ethical conduct, that they would treat me that way, to

1 be a smoke screen for what Ryan was doing and then put my
2 name in the declaration to make themselves look innocent,
3 like what kind of people am I dealing with here?

4 Q. Was one of your concerns that because your name was in
5 those documents that Purple might think you were
6 cooperating?

7 A. Absolutely. Absolutely. You know, there was no way,
8 shape or form that I could ever be implicated with Honest
9 Mattress Reviews. I didn't even know about it until I saw
10 the lawsuit papers. But by putting my name in there and by
11 being the director of marketing, I am like, oh my God, what
12 if they do try to throw me under the bus.

13 Q. Was one reason you reached out to our firm was because
14 that you were worried that if you applied at Purple and your
15 name had been in that declaration, that Purple would think
16 that --

17 A. That they would never consider --

18 MR. SPERLEIN: Objection, Your Honor, leading.

19 THE COURT: It is leading and it is your witness.
20 Try not to lead quite so much.

21 MR. MAGLEBY: I will try not to lead.

22 BY MR. MAGLEBY

23 Q. Tell us again why you reached out to the lawyers before
24 you sent a resume to Purple.

25 A. I felt like having my name in that declaration was kind

1 of like damaging what my potential reputation could be
2 anywhere. You know, if you Google my name right now that
3 declaration P.D.F. comes up with my name in it. In this
4 world you have got your reputation, and it scared me into
5 thinking if I do apply at Purple and here my name is in this
6 declaration, or if I apply anywhere else, you know, people
7 are going to see that and think I was involved in this. It
8 is just not the case.

9 Q. Was Purple paying for your counsel something that we
10 offered to do?

11 A. I certainly didn't ask.

12 Q. Would you change your testimony because we offered to
13 pay for your counsel in Utah?

14 A. No, sir.

15 Q. By the way, did Purple ever give you a job?

16 A. No, they did not. The chain of communication -- I sent
17 my resume to Savannah, who was the director of
18 communications, and she connected me with H.R. I tried on
19 multiple occasions to follow up with H.R. but it never
20 really came to fruition. I was not willing to pick my
21 family up and move to Utah, and it seemed like they were not
22 really interested in having remote workers, which is
23 definitely a risk I was totally prepared for.

24 Q. So you got a job somewhere else?

25 A. I did.

1 Q. All right. Take a look at Exhibit 773 that Mr. Horwitz
2 showed you.

3 A. Yes, sir.

4 Q. I think you indicated there maybe were other e-mails
5 that you were not shown?

6 A. This conversation chain -- yes. So this conversation
7 chain was actually quite long. Yes, there is a lot missing
8 from here.

9 Q. While you were working at GhostBed, did you from time
10 to time try to assert your control as the director of
11 marketing?

12 A. I wouldn't say it was control. I tried to assert my
13 potential, because I thought that that was the role that I
14 thought I was hired to do. It was not trying to assert
15 control. It was more to demonstrate my ability and to ask
16 for the authority that I thought I was hired to hold and be
17 responsible for.

18 Q. How did that work out?

19 A. Every single time I was told Ryan knows what he is
20 doing. Leave him alone. Whether it was pointing out
21 grammatical errors or deadlines being missed by like several
22 weeks, or things that I found to be unethical or borderline
23 harassing in some of the marketing strategies, I would go to
24 Marc or Ashley or Georgi or Alan, and I would go to anyone
25 that I felt like had a voice of influence or a direct line

1 to Ryan and I would say we need to talk about this. You
2 know, I understand that Ryan is very good when it comes to
3 the digital stuff, but some of these foundational marketing
4 things, they are just really way off. Every single time I
5 did that, I was told to stay in my place and Ryan knows what
6 he is doing. That was the response from everyone.

7 Q. So in some of the e-mails Mr. Horwitz showed you, is
8 that you trying to assert your potential?

9 A. Yes. Absolutely.

10 Q. Did it work?

11 A. Not at all. I was trying to show Marc, listen, you
12 have got a great director, you have a good in-house guy that
13 can do some of the web stuff, and we just hired a developer
14 and, like, we can form a team around this.

15 Q. All right.

16 A. He got very upset with me. He would pull me in his
17 office and berate me for like an hour. It was not fun.

18 Q. You were shown Exhibit 703 which is a spreadsheet I
19 think you put together with duties or roles.

20 Do you have that?

21 A. Yes, I do. You know what, the more that I think about
22 that spreadsheet, Alan Hirschhorn was the one that asked me
23 to do that spreadsheet and he asked me to design it in a
24 best case scenario. He said list all of the marketing
25 activities that are being performed or what all the

1 different fields would be and how you see them playing out
2 best case scenario.

3 So that list was, well, Alan, funny that you say that.
4 We have been taking a couple of weeks to mobilize the
5 internal team and getting everyone moving forward on one
6 accord and this is the direction I see it going. I think it
7 has a lot of potential and we can do this.

8 Q. Were you excited that you were finally going to be able
9 to do your job?

10 A. I thought I was going to be able to, yes. I was
11 thrilled.

12 Q. So is what is listed on that an accurate depiction of
13 what really happened?

14 A. What really happened like throughout or after this?

15 Q. After that.

16 A. Well, after this document, like I said, I can't
17 remember the exact timing of what was done here and when
18 this was done, but after this document, it wasn't much
19 longer after that that my name was kind of removed. In
20 theory my name was removed from quite a few things. You
21 know, some things here -- I think it is also important to
22 point out that some things here I was making
23 recommendations, like the surveys and the research at the
24 very bottom. I have a master's degree in research. It is
25 my foundation for all things marketing. I was suggesting

1 these things to be done to Marc and he did not see any value
2 in the research. He didn't see any value in the things that
3 were my skill set, which he was very aware of on my resume.
4 Everything just really became focused on Facebook and
5 Google. Facebook and Google was 75 percent of the business
6 like I said before.

7 Does that answer your question?

8 Q. Yes. Who was in charge of that?

9 A. Ryan and William.

10 Q. I think you may have said something, but I don't want
11 to put words in your mouth, but when you first looked at
12 this document, you said, well, this came about because there
13 was discussion maybe along the lines of reducing Ryan's
14 role.

15 Did I get that wrong?

16 A. Okay. There was an e-mail that the gentleman
17 presented, and I have defined it here, but it was an e-mail
18 from Georgianne, and, yeah, what brought that e-mail about
19 was Ryan habitually missed deadlines. In marketing timing
20 is life, especially when it comes to like promotions and
21 holidays and things like that. He would habitually miss
22 deadlines and we would not have the creative that we needed.

23 I went out and I started to work with Anne Marie, who
24 is on here as Brandy, down there at the bottom, and she is
25 under partners. I went out and I started to work with Anne

1 Marie who had worked with GhostBed on the periphery and I
2 tried to bring her more involved. Once I did that, the
3 Achieve team -- they didn't seem too happy that they were
4 not doing all of the creative. They were still doing a big
5 chunk of it but not all of it.

6 Q. All right. Let me have you look at a couple of
7 exhibits quickly. Let me have you look at Exhibit 207. It
8 is going to show up on the screen. A hard copy is in front
9 of you in the binder if you want to look at it. In the
10 interest of time I am just going to go to page 6 here.

11 This is an e-mail from you to Mr. Monahan, November 10,
12 2016. Ryan, I think it comes off that I am challenging you
13 without merit. If so, I apologize. That is not my intent.
14 Obviously you're the man and this is your show.

15 What is going on here?

16 A. I could totally understand if Ryan was territorial
17 about the GhostBed brand. I could totally understand if he
18 felt like it was his baby, something that he gave birth to,
19 and he didn't want to relinquish any of the control and that
20 is why I got so much resistance. So I finally, and this is
21 less than a month after I started, I finally just said,
22 listen, dude, this is your show. I just want to help. Can
23 I get involved?

24 Q. Are you trying to work it out with him?

25 A. I was trying.

1 Q. How did that go?

2 A. Not good.

3 Q. All right. Let me have you look at the first page of
4 Exhibit 229, December of 2016, and Mr. Monahan says to you,
5 update language, for graphics always come straight to me.

6 A. Yes.

7 Q. In other words -- well, what is going on here?

8 A. Well, like with Anne Marie, when he decided he was
9 going to be late, or if he was late or even if he was on
10 time, there would be serious grammatical errors and no time
11 for revisions. You know, if you have got a deadline with a
12 vendor and you need to get creative to them by 3:00 on
13 Tuesday or you're going to miss your Black Friday promotion,
14 4:30 on Tuesday does not cut it.

15 Furthermore, the director of marketing needs to see it
16 maybe the previous Friday or Monday to go through the
17 revision process. That never happened. It was always last
18 minute and then something was wrong with it. Even after
19 like two months, and especially going through like the
20 holiday season, I was like if I don't have to deal with this
21 I'm not going to. Let me try to bring in Anne Marie to do
22 some of the graphics. That was his response. Come straight
23 to me.

24 Q. So it didn't work out?

25 A. No.

1 Q. Your respon, Ryan, I work for Marc Werner and I am the
2 director of marketing. When the time comes I know how to
3 reach you. Thank you.

4 Again, were you trying to do your job?

5 A. Yes.

6 Q. How did this work out?

7 A. Not well.

8 Q. Let's go to Exhibit 233. I think it is the second
9 page. Ashley Werner, February 16, 2017. I agree that these
10 changes should not be happening without Ryan's knowledge and
11 approval.

12 Is that the e-mail that you were thinking about earlier
13 that --

14 A. Absolutely.

15 Q. -- Mr. Horwitz didn't show you?

16 A. Absolutely.

17 THE COURT: Now you're leading all over the place.
18 I think we are just covering ground that is in the
19 declaration or very closely related. You don't have to
20 cover everything he covered if it is already, in fairness,
21 addressed in her declaration.

22 MR. MAGLEBY: Well, let me try and you can tell me
23 if I need to be quiet, Your Honor.

24 BY MR. MAGLEBY

25 Q. February 24, 2017, an e-mail from you to Donna, and you

1 start out by saying Marc is very upset with me. I want to
2 go to the end of it. You close with I cannot lose this job
3 under these terms. My marriage and my family would not
4 survive. I will be the employee that Nature's Sleep needs,
5 end of story.

6 Why were you telling this to Donna?

7 A. Because this was after that e-mail where Ashley said
8 that everything should be approved on the website, and when
9 I said that my response was that as the director of
10 marketing I approve everything, and I didn't say that I was
11 the end all, be all, or El Jefe. I just said that the
12 approval process starts and ends with the director of
13 marketing.

14 Marc got so angry with me -- I mean, I was in his
15 office for an hour and a half under a very personal attack
16 about -- he accused me of being a dictator, he said that I
17 wasn't being a team player, and that's the consistent
18 narrative that they tried to enforce is that I wasn't being
19 a team player. Really the definition of being a team player
20 meant me being sort of -- subservient to Ryan, and this is
21 kind of the point when I realized that.

22 Q. Okay.

23 MR. MAGLEBY: Two more, Your Honor, and I am done.

24 BY MR. MAGLEBY

25 Q. This is an e-mail dated March 16, 2017. You write

1 there is no need for me to attend the weekly P.P.P. calls or
2 marketing on-site discussions. My title will remain the
3 same until another solution is figured out. However, I now
4 fully recognize that it is figurative.

5 What did you mean my title is figurative?

6 A. This was at least my fourth attempt to get my job -- my
7 job and my role clarified for me. From the time that I went
8 and I asked Donna for a plan and she said, look, we'll put
9 together a plan, and I felt so good and then I just never
10 heard from her again. And so I followed up with her again
11 and I never heard from her again. It was clearly not a
12 priority.

13 So I said, do you know what, I'm going to devise a
14 solution. Here is how we can make this work. I'm just
15 going to remove myself from the digital team. It was mostly
16 because I realized that even if I was as good a digital
17 marketer as Ryan, anything that I said that was
18 contradictory or challenging of anything that he said, Marc
19 would not agree with. He would take it very personally. So
20 anything that I had to do in working with Ryan's team, it
21 automatically put me in a position of not succeeding.

22 I am a tiger. I'm a competitive person. I wanted to
23 know what my job was and I wanted to succeed. I wrote this
24 e-mail and I told Donna, listen, I don't need to deal with
25 the external marketing team. I don't need to deal with the

1 digital. Here are the ways that I can be an effective
2 employee of the company and earn my paycheck.

3 Q. Did this work out?

4 A. No.

5 Q. Was it after this that Marc called you into his office
6 or was that before this?

7 A. That was actually after -- you know, I don't think --

8 Q. It does not matter. I withdraw the question.

9 You were asked some questions by Mr. Horwitz regarding
10 your feelings toward GhostBed. Regardless of your feelings
11 towards GhostBed, would you lie for anybody?

12 A. Absolutely not.

13 Q. Has Purple offered you a free mattress to lie in this
14 case?

15 A. Absolutely not.

16 Q. Did you get any benefit out of filing that declaration?

17 A. No, sir.

18 Q. Are you terrified that you're going to be sued?

19 A. Absolutely.

20 Q. Why in the world did you do that? Why would you come
21 forward knowing that you might be sued?

22 A. Because at this point it is already -- like once he put
23 my name in that declaration he got me involved, and because
24 of the ethical plain that I operate on, which goes back to
25 me begging them to give me work, like I am sitting here

1 collecting a paycheck, give me something to do. Let me earn
2 my money. Let me prove myself.

3 That just goes back to my ethical high ground. No,
4 once he put my name in that document I knew I was going to
5 get involved one way or another. Somebody was going to ask
6 me a question and I was going to answer it honestly. Was I
7 going to answer it honestly while I was an employee at
8 GhostBed and already felt a very contentious environment, or
9 try to take things into my own hands and just tell the truth
10 on different terms?

11 THE COURT: Aren't you done?

12 MR. MAGLEBY: Okay. I'm done.

13 It is not an employment case. I won't ask that
14 question.

15 THE COURT: Thank you.

16 Mr. Horwitz, anything further from you, sir?

17 MR. HORWITZ: A little bit, Your Honor.

18 THE COURT: Okay.

19 RECROSS-EXAMINATION

20 BY MR. HORWITZ

21 Q. I want to bring Exhibit 761 up on the monitor. You
22 were talking about that you could do it as well as Ryan
23 Monahan could?

24 A. No, I never said that.

25 Q. Okay. But here you're saying what he does is pretty

1 amazing and you are eager to sponge as much as possible.

2 That was you asserting yourself and trying to be a leader as
3 the director of marketing?

4 A. That was me complimenting Ryan and saying, you know,
5 when it comes to digital marketing, I realize I could learn
6 a lot from you and I am happy to do that.

7 Q. Let's look at Exhibit 777.

8 MR. MAGLEBY: Is there a copy of that for us?

9 MR. HORWITZ: Yes.

10 BY MR. HORWITZ

11 Q. This is what you just saw before, right?

12 A. Yes, sir.

13 Q. And Ryan sends you a message, for graphics always come
14 straight to me, the fastest route without any message in
15 between, and, going down, don't hesitate to call me
16 directly. I am available 24-7.

17 Do you see that?

18 A. Yes, sir.

19 Q. And your answer was I work for Marc Werner and I am the
20 director of marketing. When the time comes I know how to
21 reach you. Thank you.

22 A. Yes, sir.

23 Q. Is that your attempt to work together as a team?

24 A. The date on this e-mail is December 27th. The previous
25 conversation is that the creative for the holiday campaign

1 was due on December 9th and it just simply never came, not
2 that it was a couple weeks late, not that it was a couple
3 days late, it just never came. I had to shuffle and find
4 somebody to do the holiday campaign, and then without Ryan
5 even apologizing for being late, he comes to me and says for
6 creative always come to me. Dude, the creative was due from
7 you December 9th and it just never came.

8 At that point I was like I work for Marc and I am going
9 to try and follow Marc's lead on this.

10 Q. Marc's lead was to be -- I mean to me it is insulting.
11 When the time comes I know how to reach you. That was
12 Marc's lead?

13 A. No, that was me saying that. I don't think that it is
14 insulting for the director of a company who is trying to
15 assume a director role to say that to a person who is
16 assumed to be an outside consultant. I don't think that
17 that is insulting at all.

18 Q. It is not insulting to say when the time comes I know
19 how to reach you?

20 MR. MAGLEBY: Asked and answered.

21 BY MR. HORWITZ

22 Q. Were you spoken to a number of times by Mrs. Werner and
23 by other people in the company in terms of your
24 interpersonal skills?

25 A. I think that that is a really good question, because --

1 Q. I just asked the question and the answer is yes or no.

2 A. No. No. The answer is no, but the caveat is very
3 important and I will answer it if you want me to.

4 Q. So nobody ever said to you that you have got to make
5 more of an effort to get along with other people and that
6 this is a team effort? Nobody ever said that to you?

7 A. What Donna said was that she did not think that I was
8 being a team player. When I asked her for specific
9 instances she couldn't tell me, so I forwarded her all of
10 the conversations with Ryan and I, and I said to her, I said
11 for my own professional development, because I really want
12 to know, how is it that I could have done better here? I
13 never received a response.

14 Q. And you never apologized for some things that you said
15 to people, other employees for being --

16 A. I am not aware of any employee in that building that
17 didn't consider me to be a very professional person, a great
18 teammate and a great person to work with.

19 Q. Okay. Now, you talked about your ethics, right?

20 A. Yes, sir.

21 Q. You were aware that there was a lot of confidential
22 information that was --

23 MR. MAGLEBY: Your Honor, irrelevant.

24 MR. HORWITZ: Your Honor, the witness brought it
25 up in terms of her ethics. I have the right to explore

1 that.

2 THE COURT: The objection is sustained. It is
3 beyond the scope of this hearing.

4 MR. HORWITZ: Your Honor --

5 THE COURT: I have ruled.

6 MR. HORWITZ: Thank you, Your Honor.

7 No further questions.

8 THE COURT: All right. Any other questions from
9 you, sir?

10 You can step down. You are excused as a witness.

11 MR. MAGLEBY: No.

12 THE COURT: There is no rebuttal, I take it?

13 MR. SPERLEIN: No.

14 THE COURT: All of the witnesses are excused as
15 witnesses.

16 I have pending a motion, and I mentioned earlier
17 GhostBed's short form discovery motion to compel documents,
18 and that motion is denied. I find nothing irregular or
19 improper done by the law firm of Magleby Cataxinos &
20 Greenwood and no merit, therefore, to the motion or its
21 accompanying request for the award of attorneys' fees.

22 I want to say this before we finish today. Based
23 on the evidence I have heard at this hearing and the
24 evidence previously submitted in the record, there are
25 several things that I am inclined to do. I am inclined to

1 grant a preliminary injunction in some degree. I find that
2 Honest Mattress Reviews is not independent and unbiased as
3 represented to this Court in previous declarations and with
4 great vigor by Mr. Randazza in the past, that we had an
5 independent journalist who was entitled to full protection
6 as an independent journalist with all of the First Amendment
7 rights of journalists. That was based primarily on the
8 representation of Mr. Monahan running that site in a way
9 that was unassociated in any significant way with GhostBed.

10 I am reading now the declarations of Mr. Werner
11 and Mr. Monahan, and I am not claiming that they were
12 actively trying to mislead the Court, but they in many
13 respects, to say it most diplomatically, failed to address
14 the issue that the Court needed to learn about in order to
15 do its job, and that is to fully illuminate those
16 associations. I don't quite know how those declarations got
17 worded the way they did. The Court finds them difficult to
18 reconcile with what the Court has heard from the evidence.

19 This is without regard to Ms. Anderson and just
20 listening to Mr. Werner and Mr. Monahan. These declarations
21 trouble the Court. Even the way Mr. Werner, for example,
22 tried to defend his very straightforward statement in
23 paragraph six that GhostBed does not have any affiliation
24 whatsoever with Honest Reviews, L.L.C. or Mr. Monahan, by
25 referring the Court, and Mr. Horwitz did as well in this

1 questioning, to paragraph 12, where the paragraph very
2 obliquely and indirectly refers to Achieve using another
3 entity, Social Media Sharks, to consult an online presence,
4 and then it ends with these sentences, I understand that Mr.
5 Monahan is associated with Social Media Sharks. It would
6 have been helpful to the Court, let's face it, to explain
7 what that relationship was, that GhostBed was paying through
8 Achieve, Social Media Sharks and Mr. Monahan, who was
9 getting 50 percent of that income on a regular monthly
10 basis.

11 He then gives me what I can only think might be
12 placed in the category of misdirection, and then jumps to I
13 became aware of Mr. Monahan in December of 2015. I
14 understand that Mr. Monahan also consults for a number of
15 other mattress companies. This is largely, or at least a
16 predominant reason why I dissolved the original T.R.O.,
17 which on an ex parte basis I found to be quite persuasive.
18 I relied on this.

19 Later in paragraph 21, and it is clever lawyer
20 drafting, I suppose, Mr. Werner says I understand -- this is
21 the Court trying to get helpful information and Mr. Werner
22 in his declaration, which seemed more impressive at the
23 time, in support of GhostBed, coupled with Mr. Randazza's
24 and Mr. Sperlein's vigorous defense that their client was an
25 independent, objective journalist, and paragraph 21 says I

1 understand that Purple claims that GhostBed has a
2 relationship with the honestmattressreviews.com website,
3 because that site rates the GhostBed mattress highly.

4 Then he takes the liberty to say that I would
5 point out that the website also rates nine other mattresses
6 as high as GhostBed. Then it says I would also point out
7 that GhostBed's sister company, Nature's Sleep, has a
8 mattress rated on the website and that rating is one of the
9 lowest rated mattresses. So I have a fact witness sort of
10 educating the Court, apparently, and, thus, no inference
11 should be made that there is a relationship between the
12 website and GhostBed.

13 From the information that I have heard today,
14 there is a lot of evidence that I find persuasive of a
15 relationship between that website and GhostBed. There is no
16 question in my mind about a relationship between Mr.
17 Monahan, who is the only owner of that website, and
18 GhostBed. The e-mails or communications traffic between Mr.
19 Werner and Mr. Monahan about the question of whether Mr.
20 Monahan should be allowed to designate himself as the chief
21 brand officer at GhostBed I find to be clearly in Purple's
22 favor.

23 I have serious credibility issues with both Mr.
24 Werner and Mr. Monahan in their description of the
25 association between the two. I find Ms. Anderson's

1 testimony to be quite credible. I think there was
2 difficulty with her personality and others in the company,
3 and she is clearly a very assertive person to me, but it has
4 not undercut the essence of her declaration.

5 From the previous record that has been
6 represented, it is clear to the Court that the Honest
7 Mattress Reviews website is, under any examination,
8 critical, significantly critical of Purple mattresses.
9 There are some efforts to be more evenhanded, but overall
10 there is no question, in my review of the record, that that
11 website has been highly critical of Purple mattresses.

12 I know there are submissions to suggest that -- I
13 have forgotten his name -- doctor --

14 MR. MAGLEBY: Dr. Godleski.

15 THE COURT: -- has some information about
16 polyethylene or whatever it is that might have some effect
17 on someone's respiratory system, and GhostBed is certainly
18 free as a competitor in the industry, I would think, so long
19 as it is lawful and legal, to point that out to the public,
20 but not through a blog site or a website that is not
21 disclosing the connections that exist between that website
22 and GhostBed.

23 So at a minimum I'm inclined to grant a
24 preliminary injunction requiring a full disclosure of the
25 relationship between Mr. Monahan and Mr. Werner and GhostBed

1 as I have summarized briefly here this afternoon.

2 Two other matters. I guess I would like some
3 briefing and a request from the plaintiff and some response
4 from the defendants. I don't know quite what to do at this
5 point about restricting Mr. Monahan completely, or, if I
6 don't restrict him in a more complete manner, to restrict
7 him from improper comments on this lawsuit. That is tricky
8 to draft. I don't want to unfairly muzzle somebody.

9 I will also request in that submission what other
10 restrictions should be placed on the content of that
11 website, should it appear to be appropriate for Purple.

12 Thank you for indulging a Saturday all-day hearing
13 on this matter.

14 Is there anything else from either side before we
15 take a recess?

16 MR. MAGLEBY: Your Honor, we would like to get
17 that disclaimer up, and not just on the website but any time
18 there is a YouTube post, social media, Facebook, I mean, he
19 pushes this stuff out on a daily basis 24/7, as he said. So
20 what I would like to do is submit a proposed disclaimer and
21 proposed order on that aspect of the Court's ruling. We'll
22 just, rather than try to work it out with the other side,
23 let's face it, we are not going to work it out, so let us
24 submit it and they can respond to it and Your Honor can
25 address it.

1 THE COURT: I would like to get something out
2 early next week.

3 MR. MAGLEBY: We will submit something to you by
4 Monday at noon.

5 THE COURT: Well, I will look at it.

6 MR. MAGLEBY: Let me say Monday at 5:00.

7 THE COURT: Close of business Monday and then
8 let's see where we are. I don't know how urgent it is, but
9 I assume it is urgent to the plaintiffs.

10 MR. MAGLEBY: Very.

11 THE COURT: Mr. Horwitz or someone said earlier
12 that they thought your sales were going up. I don't know.
13 What is most discouraging to me is that I feel the Court has
14 been somewhat not fairly -- well, it would have been nice to
15 have more information. I don't know if we would be at this
16 juncture but for Ms. Anderson coming forward.

17 As I said earlier, without her testimony, what was
18 able to be presented today, just through the examination of
19 Mr. Werner and Mr. Monahan, satisfied the Court that there
20 is a relationship there that has never been fully disclosed
21 and in some ways has been misrepresented.

22 Mr. Horwitz?

23 MR. HORWITZ: Your Honor, we will be able to get
24 back to you, and if he submits something to you by 5:00 on
25 Monday, we'll be able to get back to you by Tuesday.

1 THE COURT: Tuesday.

2 MR. HORWITZ: You will have it Wednesday morning
3 when you get in.

4 THE COURT: Okay. All right. Thank you.

5 Have a good rest of the weekend.

6 MR. SPERLEIN: I am sorry, Your Honor. I'm a
7 little bit unclear of what you are going to be getting back.
8 Did you say you wanted briefing or are you just looking for
9 statements and how to implement the preliminary injunction?

10 THE COURT: I am inclined to grant a preliminary
11 injunction. The exact contours of it I have not fleshed out
12 yet. I would like a submission from the plaintiff to
13 request what they would like to have in that preliminary
14 injunction. I would like to give both the defendants a
15 chance, as Mr. Horwitz just mentioned, by the following day
16 to respond to that request.

17 It is basically going to focus on three things, I
18 think a commentary on the lawsuit and a restriction of
19 content, and I don't know how far the plaintiff wants to
20 urge the Court to go in that regard, and that would be
21 content about whether this is cancer causing and that kind
22 of thing. Then the third thing and the one I'm most
23 educated on after today's hearing is a full disclosure of
24 the relationship between Mr. Monahan and his website and
25 GhostBed and Mr. Werner.

1 MR. SPERLEIN: So it would be fair to refer to
2 what you are asking for as a proposed order, more or less?
3 That is what we're talking about?

4 THE COURT: Yes. I think that is fair.

5 MR. HORWITZ: Your Honor, I thought that you
6 wanted the disclosure information by Monday, and we'll
7 respond on the disclosure, but then you want briefing on the
8 rest of it?

9 THE COURT: I would like it all on Monday and then
10 your response by Tuesday. I think it is high time we did
11 something here. I might reserve on the latter two, but
12 let's get this started by -- I assume you guys are ready to
13 go with a request?

14 MR. MAGLEBY: That is easy for me to say. I work
15 all weekend anyway, but my team is --

16 THE COURT: Well, make it by Tuesday then, but I
17 want to get it done this next week.

18 MR. HORWITZ: Your Honor, if they get it to you by
19 Tuesday, and I am out of pocket starting Wednesday for the
20 Jewish holidays, but --

21 MR. MAGLEBY: We will get it done by Monday, Your
22 Honor.

23 THE COURT: Monday. If you can get me something
24 by Tuesday, and if there is a reason to reserve on the
25 content and the lawsuit aspects of it, then I can reserve on

1 that and require immediately there to be a full disclosure
2 of the association by Tuesday.

3 MR. HORWITZ: What I am suggesting, Your Honor, is
4 that we will address the disclosure by -- they will do it by
5 Monday and we will do it by Tuesday, but that the other
6 issues will follow very quickly but with full briefing.

7 MR. MAGLEBY: Your Honor, we'll submit all three,
8 and then --

9 THE COURT: Submit all three and then you seek
10 leave of court to have more time to address the other
11 matters rather than disclosure if you don't have time.

12 MR. HORWITZ: I would urge Your Honor -- we will
13 seek it now --

14 THE COURT: Okay.

15 MR. HORWITZ: -- because I know what is going to
16 happen. Wednesday I get on a plane to go to my daughter's
17 for the holidays.

18 THE COURT: I appreciate that, but I am sure there
19 are other attorneys. Ms. Yost I think could work on it. I
20 don't know that -- I'm sure that you are quite
21 indispensable, but there may be other people in --

22 MR. HORWITZ: Your Honor, you are disappointing
23 me. I would like to believe that I am totally
24 indispensable.

25 THE COURT: We'll put you under oath and you

1 probably -- he thinks the same thing.

2 MR. HORWITZ: Your Honor, I have convinced myself
3 of that, whether it is true or not.

4 THE COURT: Well, I would assume that you all knew
5 what was likely to be coming after this hearing, so I don't
6 know how much more briefing it needs, but it has all been
7 pretty well briefed.

8 I understand. I will probably give you more time
9 on those other two aspect if you need it.

10 MR. HORWITZ: I appreciate that.

11 THE COURT: Okay.

12 We're in recess.

13 (Proceedings concluded.)
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